16-5-21

Supreme Court of the United States.

No. 7. ORIGINAL. OCTOBER TERM, 1882.

EX PARTE: IN THE MATTER

OF

SELAH C. CARLL.

PETITION FOR HABEAS CORPUS
AND CERTIORARI.

FILED JANUARY , 1883.

BURGOYNE, Printer, 57, 59 & 61 Park St. (Law Telephone 587), N. Y.

Petition 1–7
Affidavit of A. J. Dittenhoefer............ 8
Indictment 9–29
Plea in Abatement 30
Notice of Motion New Trial. 71
Extract of Minutes Showing Sentence..... 72

TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA, AND TO THE JUSTICES OF SAID COURT:

The petition of Selah C. Carll, late of the City and County of New York, in the Southern District of New York, in the Second Circuit, respectfully shows:

FIRST. That on the 8th day of March, in the year one thousand eight hundred and eighty-one, an indictment was found against your petitioner, wherein and whereby he was charged with having passed, uttered and published certain falsely made, forged and counterfeited instruments, alleged to have been bonds, obligations and securities of the United States, with intent to defraud the Bank of the Metropolis, a corporation organized under the laws of the State of New York. That thereafter your petitioner, on the 15th day of June, of said year, pleaded that he was not guilty of the said offences therein charged against him. And on the 20th day of October, of said year, upon a trial had before the Honorable Charles L. Benedict and a jury in the City of New York, in the District and Circuit aforesaid, your petioner was found guilty and convicted of the alleged offenses set forth in said indictment.

That thereafter motion was made before three Judges sitting in banc for an arrest of the said judgment and for a new trial. That said Court divided and certified to the Supreme Court of the United States certain questions involving the sufficiency of said indictment, and the said Supreme Court answered the questions certified to them for consideration and held the said indictment insufficient, because of the failure to allege therein that your petitioner knew, at the time of the passing of the said alleged securities, that the same were falsely made, forged or counterfeited, and judgment upon the verdict found against your petitioner was arrested.

SECOND. That thereafter and on or about the 20th day of June, in the year one thousand eight hundred and eighty-two, another indictment was found against your petitioner, wherein and whereby he was charged with the identical offences with which he was charged in the indictment hereinbefore mentioned. And on the 30th day of June, 1882, your petitioner was arraigned upon the said indictment and again pleaded not guilty of the offences therein charged against him. That thereafter and on the 19th day of October, 1882, upon a trial had before the Honorable Charles L. Benedict, District Judge, and a jury, in the City of New York, in the district and circuit aforesaid, your petitioner was found guilty of the offences in said indictment charged, and thereafter a motion was made in accordance with the rules and practice of said Court to arrest judgment upon said conviction and for a new trial, which was denied by the three judges sitting in banc.

That the said indictment on which your petitioner was convicted as aforesaid contains twelve counts, as will more fully appear by reference to said indictment contained in the record hereto annexed. That on the 26th day of December, 1882, your petitioner was sentenced upon the first count of said indictment, for the term of fifteen years at hard labor in the Erie County penitentiary, and has become and is now in the custody of the Marshal of the United States for the Southern District of New York, and judgment and sentence was suspended upon the remaining eleven counts.

THIRD. Your petitioner further shows to this Court and states on the advice of his counsel, Abram J. Dittenhoefer, Esq., of No. 291 Broadway, New York City, that your petitioner is unjustly and illegally restrained of his liberty, for the reasons:

1st. No crime is charged against your petitioner in the idictment upon which the prosecution was founded and the said conviction had, because the instruments described in the indictment and charged to have been falsely made, forged and counterfeited and called therein "bonds of the United States," show upon their face that, even if genuine, they possessed no validity. That the said bonds, excepting the instrument set forth in the third count of said indictment, were issued, as appears on their face, under the Act of Congress of July 14th, 1870, as amended by the Act of Congress of January 20th, 1871, which provided that the Secretary of the Treasury should issue, in such form as he may prescribe, coupon or registered bonds of the United States, in the aggregate $200,000,000, whereas it appears on the face of said bonds that one "John Allison," styling himself "Register of the Treasury," signed and issued the same. That the said acts gave the Register of the Treasury no authority to issue or sign the said bonds, nor did the Register of the Treasury obtain any such power from Sections 312 to 315 of the Revised Statutes of the United States creating his office and prescribing his duties and powers. That inasmuch as Congress has omitted from the Act of 1870 any power of delegation in the Secretary of the Treasury to sign the bonds, such as is found in the Act of February 25th, 1862, relating to the issue of other coupon or registered bonds, it is clear that the Secretary of the Treasury, in respect to the bonds in question, could not delegate his power to issue the bonds, but must, in accordance with the Act of 1870, above referred to, issue and sign them himself; and that without a provision in the act authorizing the delegation of such power, the bonds have no validity whatever.

That the instrument mentioned and set forth in the third count of the indictment as a "Bond of the United States" also show upon its face that even if genuine, it possessed no validity. That it was issued under and in pursuance of an act of Congress, approved July 17th and August 5th, 1861, which authorizes the Secretary of the Treasury to borrow $250,000,000, and to issue coupon or registered bonds in such form as he may deem advisable, but expressly directs that they be signed by the First Second Comptroller or the Register of the Treasury and countersigned by such other officer as the Secretary of the Treasury may designate; whereas, it appears on the face of said instrument, called in said indictment "Bond of the United States," that the same was signed by one "J. A. Graham," styling himself "Acting Register, U. S. Treasury," and countersigned by no one; and under Section 315 of the United States Revised Statutes bonds of the United States are expressly excepted from the operation of that section, which declares that official records and instruments signed by the Assistant or Acting Register of the Treasury shall have the same effect as if signed by the Register of the Treasury. That inasmuch as Congress expressly directed in the act of July 17th, 1861, that this bond should be signed by the First or Second Comptroller or the Register of the Treasury, unless some express statute exists authorizing the person acting as or for the Register to sign (and none does exist) it is clear that this bond has no validity, especially as it appears upon its face not to have been countersigned.

2d. That the United States court had no jurisdiction of the offenses, for the alleged commission of which your petitioner was indicted, convicted and sentenced, because the instruments set forth in the indictment, although alleged therein to have been bonds, obligations and securities of the United States appeared upon their face to have been no bonds of the United States or instruments coming under the protection of the United States, but were, if anything, the individual obligations or bonds of John Allison, J. A. Graham, W. P. Titcomb and G. W. Scofield, who signed the bonds respectively; that while it is recited in said instruments that the United States of America will pay, at a certain time, to the payees therein named, a certain sum of money, there does not appear upon the face of said bonds, nor is there alleged in the indictment, any authority in the respective persons signing and issuing the same, to bind the United States by these bonds or the promises therein contained; that as far as appears from the face of said bonds or the indictment aforesaid in the Acts of Congress under which said bonds purport to have been issued, the signing and issue of said bonds were wholly unauthorized and uncalled-for acts on the part of John Allison and the other persons named, and if any liability is created, it is the individual liability of John Allison, J. A. Graham, W. P. Titcomb and G. W. Scofield, and for the passing of a falsely made or forged note or bond of these individuals the State Courts have sole jurisdiction; that the addition of their names "Register of the United States" or "Acting Register of the United States" does not in itself indicate the existence of any relation between the said individuals and the United States Government, which gives any greater character to the said bonds than if these descriptions of these individuals had not been added to their names.

3d. That the Court which assumed to and did try and sentence your partitioner for the commission of the aforesaid offenses, was wholly without jurisdiction in the premises.

It was conceded on the trial of your petitioner, that all of the instruments set forth in the indictment were genuine registered bonds—non-negotiable by delivery, but transferable only on the books of the Treasury Department of the United States, and that the forgery complained of consisted in the erasure of the names of the original or true payees and the insertion in lieu thereof of the name of your petitioner, and that neither the United States or the original payees suffered any injury from such alteration, and that duplicate registered bonds had been issued by the United States to the true and original payees. It was not pretended or charged that your petitioner was guilty of altering the said bonds, but merely that for the purpose of inducing the Bank of the Metropolis to discount your petitioner's notes, he presented these bonds to the said bank as collateral security for his said notes and represented that he was the true payee therein named, for the purpose of defrauding said bank, and that your petitioner knew at the time of passing said bonds that the same had been altered by the insertion of his own name in the place of the name of the original or true payee. That the act of which your petitioner was thus found guilty of, was merely a cheat or fraud alleged to have been practiced by your petitioner upon the Bank of the Metropolis, of which crimes the Courts of the State of New York, in which said cheat was alleged to have been practiced, then had and now have exclusive jurisdiction.

4th. That the said Court which assumed to and did try and sentence your petitioner for the alleged comission of the aforesaid offenses, was wholly without jurisdiction in the premises because section 5431 of the Revised Statutes of the United States, which it was claimed your petitioner had violated, contemplated only such a change in the bonds as would result in injury to the United States, or affect the liability, and not a change which could in no degree operate to the injury of the United States or the payee named in the bond, but would, at most, only work a cheat upon an individual; that the passing within the State of New York of a registered United States bond, which had been altered merely by the erasure of the original or true payee's name and the insertion of your petitioner's was an act, whether for a good or bad purpose or whether with an honest or a criminal intent, cannot be made an offense against the United States, inasmuch as that act had no relation to the execution of a power of Congress or to any matter within the jurisdiction of the United States.

Fourth. Your petitioner further shows, upon his information and belief, that the Circuit Court of the United States in and for the Southern District of New York now holds in its possession all the proceedings of the trial and conviction of your petitioner and of the said Court which assumed to and did try and convict and sentence your petitioner, and it is necessary, as your petitioner is advised by his said counsel and verily believes to be true, that said Circuit Court of the United States should certify and return all the said proceedings of such trial, conviction and sentence and of the said Circuit Court to this Court, under and by virtue of a writ of *certiorari* issued to said Court from, out of aed under the seal of this Court in the premises, to the end that this Honorable Court may fully and fairly be advised as to the jurisdiction, authority and proceedings of said Court, to the end that the great wrong and injustice done to your petitioner may be corrected speedily.

FIFTH. And your petitioner further shows that he now is, and ever since said sentence has been, confined in the custody of the Marshal of the United States for the Southern District of New York, in the common jail of the City and County of New York, in said second Circuit, preparatory to being taken to the Erie County penitentiary, Buffalo, in the State of New York, there to be transferred to the custody of the Marshal of the United States for the Northern District of New York and of the keeper of the Erie County penitentiary, Buffalo, in said State of New York, under the said illegal judgment and sentence pronounced against your petitioner on the 26th day of December, 1882, by said Circuit Court of the United States for the Southern District of New York, in the Second Circuit, and is restrained of his liberty in violation of the Constitution of the United States of America, and of the law in such case made and provided. Your petitioner is not committed or detained by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any warrant or execution issued upon such judgment or decree, as your petitioner is advised by his said counsel, and verily believes to be true.

That annexed hereto is a copy of the record containing the indictment, proceedings had before the said Circuit Court upon the trial and conviction of your petitioner under said indictment, and of the judgment or commitment under which your petitioner is now unjustly and illegally restrained of his liberty aforesaid; and your petitioner prays that the same may be taken in full, as a part of this petition, showing the proceedings had against your petitioner in the premises.

Wherefore your petitioner prays that a writ of *habeas corpus* issue out of and under the seal of this Honorable Court, directed to the Marshal of the United States for the Southern District of New York, or the Marshal of the United States for the Northern District of New York, or such other person or persons as may have your petitioner under restraint or in custody, commanding them and each of them to produce your petitioner before this Honorable Court, at the City of Washington, in the District of Columbia, at such time as the Court shall direct, and that they and each of them then and there show the cause of your petitioner's detention, to the end that your petitioner may be discharged from custody.

And your petitioner also prays that a writ of *certiorari* also issue out of and under the seal of this court, directed to the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit, commanding said Court to certify and return to this Court all the proceedings of said Court, including the indictment against your petitioner, the testimony taken at the trial thereunder with the sentence, judgment, conviction and order of commitment of said Court, and the record of said Court respecting the same, and the adjudication thereon, to the end that the errors therein may be corrected by this Honorable Court.

And your petitioner will ever pray, &c.

Dated New York, December , 1882.

SELAH C. CARLL.

SOUTHERN DISTRICT OF NEW YORK, City and County of New York, } ss.:

SELAH C. CARLL, being duly sworn, deposes and says that he is the petitioner herein; that he has read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

SELAH C. CARLL.

Sworn to before me this 27th }
day of December, 1882. }

PHILLIP KIERNAN,
(45) Notary Public,
N. Y. Co.

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } SS.:

ABRAM J. DITTENHOEFER, being duly sworn, desposes and says, that he is the attorney for Selah C. Carll, the petitioner herein; that annexed hereto marked exhibit No. 1 is a true copy of the record and proceedings showing the indictment and testimony taken at the trial of said Carll under the said indictment; and that annexed hereto marked exhibit No. 2 is a true copy of the judgment and commitment of the Circuit Court of the United States, under which the said petitioner, Selah C. Carll, is now confined and imprisoned pursuant thereto; that the same have been compared with the originals on file in the office of the Clerk of the Circuit Court of the United States in and for the Southern District of New York, and that the said judgment and commitment have also been compared with the original judgment and commitment against the said petitioner, that the same are true copies thereof, and of the whole of the said originals.

A. J. DITTENHOEFER.

Sworn to before me this 29th }
day of December, 1882. }

A. A. CAULDWELL,
Notary Public,
N. Y. Co.

Exhibit No. 1.

CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York,
In the Second Circuit.

The United States
against
Selah C. Carll.

October, 1882.
No. 112.

Motion for a new trial and in arrest of judgment.

The defendant was indicted at the May Term, 1882, of this Court, for violations of Section 5431 of the United States Revised Statutes.

The indictment is as follows:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Southern Disrrict of New York, in the Second Circuit.

At a Stated Term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, begun and held in the City of New York, within and for the District and Circuit aforesaid, on the second Wednesday of May, in the year of our Lord one thousand eight hundred and eighty-two, and continued by adjournment to and including the twentieth day of June, in the year of our Lord one thousand eight hundred and eighty-two.

Southern District of New York, ss.:

The Jurors of the United States of America within and for the District and Circuit aforesaid, on their oath present that Selah Crosby Carll, late of the City and County of New York, in the District and Circuit aforesaid, yeoman heretofore, to wit: on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and seventy-nine, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, feloniously, and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter, and publish to and upon the said bank a certain falsely made, forged, and counterfeited obligation and security of the United States, to wit: a falsely made, forged, and counterfeited bond of the United States, of the funded loan of the year of our Lord one thousand eight hundred and eighty-one, which said falsely made, forged, and counterfeited bond, obligation, and security was then and there in the words and figures following, that is to say:

"WASHINGTON, May 1st, 1871.

"Funded loan of 1881, interest 5 per cent., principal and interest payable in coin at the Treasury of the United States **10,000.**

"The United States of America + 14,481 + are indebted to Selah C. Carll or assigns + 14,481 + in the sum of ten thousand dollars. This bond is issued in accordance with the provisions of an Act of Congress entitled 'An Act to authorize the refunding of the National debt, approved July 14, 1870, amended, by an Act approved January 20, 1871,' and is redeemable at the pleasure of the United States, after the first day of May, A. D. 1881, in coin of the standard value of the United States on said July 14th, 1870, with interest on such coin from the day of the date hereof, at the rate of five per centum per annum, payable quarterly, on the first day of February, May, August and November in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States as well as from taxation in any form, by or under State, municipal or local authority. Transferable on the books of this office.

"JOHN ALLISON,
"Register of the Treasury.

"Entered C. F. B. Recorded H. M.
"Act of July 14th, 1870.

"Ten thousand dollars, ten thousand dollars;" which said falsely made, forged and counterfeited bond obligation and security then and there bore the imprint and the impression of the seal of the department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited bond, obligation and security was then and there an endorsement in words and figures following, that is to say:

"Act of July 14th, 1870, amended January 20th, 1871.

"Transfer.

"No.

"Original Date, Aug. 1st, 1876.

"Original No."

He, the said Selah Crosby Carll, at the time when and the place where he so as aforesaid passed, uttered and published the said falsely made, forged and counterfeited bond, obligation and security of the United States, then and there well knowing said falsely made, forged and counterfeited bond, obligation and security to be then and there falsely made, forged and counterfeited. Then and there against the peace of the United States and their dignity, and against the form of the statute of the United States in such case made and provided.

SECOND COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the district and circuit aforesaid, yeoman heretofore, to wit, on the nineteenth day of December, in the year of our Lord one thousand eight hundred and seventy-nine, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the law of the State of New York, did pass, utter and publish to and upon the said Bank of the Metropolis a certain falsely made, forged and counterfeited obligation and security of the United States, to wit, a falsely made, forged and counterfeited bond of the United States of the denomination of ten thousand dollars, which said falsely made, forged and counterfeited bond, obligation and security was then and there in the words and figures following, that is to say:

"WASHINGTON, May 1st, 1871.

"Funded loan of 1881. Interest 5 per cent. Principal and interest payable in coin at the Treasury of the United States. The United States of America are indebted to Selah C. Carll or assigns in the sum of ten thousand dollars.

"+29,438+ +29,438+

"This bond is issued in accordance with the provisions of an act of Congress entitled 'An Act to Authorize the Refunding of the National Debt, Approved July 14, 1870, Amended by an act Approved January 20, 1871, and is redeemable at the pleasure of the United States after the first day of May, A. D. 1881, in coin of the standard value of the United States on said July 14, 1870, with interest in such coin from the day of the date hereof, at the rate of five per centum, payable quarterly, on the first of February, May, August and November, in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as taxation in any form or under State, municipal or local authority.

"Transferable on the books of this office.

"JOHN ALLISON,
"Register of the Treasury.

"Entered, C. F. B. Recorded, H. M.

"Act of July 14th, 1870.

"Ten thousand dollars. Ten thousand dollars."

Which said falsely made, forged and counterfeited bond, obligation and security then and there bore the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited bond, obligation and security then and there was an endorsement in words and figures following, that is to say:

"Act of July 14th, 1870.
" Amended January 20th, 1871.
" Transfer No.
" Original date June 24th, 1876.
" Original No. "

He, the said Selah Crosby Carll, at the time when and at the place where he so, as aforesaid, passed, uttered and published the said falsely made, forged and counterfeited bond, obligation and security then and there well knowing the same to be then and there falsely made, forged and counterfeited. Then and there against the peace of the United States and their dignity and against the form of the statute of the said United States in such case made and provided.

THIRD COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the district and circuit aforesaid, yeoman heretofore, to wit: On the twentieth day of September, in the year of our Lord one thousand eight hundred and seventy-nine, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon the said bank a certainly falsely made, forged and counterfeited obligation and security of the United States, to wit: A falsely made, forged and counterfeited certificate and bond of the United States, which said falsely made, forged and counterfeited certificate, bond, obligation and security was then and there, in the words and figures following, that is to say:

"No. 19,294. 10,000 Treasury Department, Register's Office, "10,000. No. 19,294. It is hereby certified that the United "States of America are indebted unto Selah C. Carll, or assigns, "the sum of ten thousand dollars, redeemable after the 30th "day of June, 1881, with interest from the first day of January, "1866, inclusive, at six per cent. per annum, payable on the "first days of January and July in each year. This debt is authorized by Acts of Congress, approved July 17th, and August "5th, 1861, and is transferable on the books of this office. "Washington, May 24th, 1866. J. A. Graham, Acting Register "U. S. Treasury. Entered J. H. J. Recorded J. R. N. Loan "of July 17th, and Aug. 5th, 1861," which said falsely made, forged and counterfeited certificate, bond, obligation and security of the United States, then and there bore the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited certificate, bond, obligation and security of the United States was then and there an endorsement in words as follows, that is to say:

Transfer No.

He, the said Selah Crosby Carll, at the time when, and the place where he so, as aforesaid, passed, uttered and published the said falsely made, forged, and counterfeited certificate, bond, obligation and security of the United States, then and there, well knowing the same to be then and there falsely made, forged and counterfeited.

Then and there, against the peace of the United States and their dignity, and against the form of the statute of the said United States in such case made and provided.

FOURTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the District and Circuit aforesaid, yeoman heretofore, to wit, on the 24th day of February, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, feloniously, and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon the said bank, a certain falsely made, forged and counterfeited obligation and security of the United States, to wit, a falsely made, forged and counterfeited bond of the United States, which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there, in the words and figures following, that is to say:

" Washington, May 1st, 1871. Funded Loan of 1881. In-
" terest 5 per cent. Principal and interest payable in coin at
" the Treasury of the United States. (Five thousand.) The
" United States of America are indebted to Selah C. Carll, or
" assigns, in the sum of five thousand dollars.
" + 8967 + + 8967 +
" This bond is issued in accordance with the provisions of an
" Act of Congress, entitled 'An Act to authorize the refunding
" 'of the National debt, approved July 14, 1870, amended by an
" 'act approved January 20, 1871,' and is redeemable at the
" pleasure of the United States after the 1st day of May, A. D.
" 1881, in coin of the standard value of the United States, on

" said July 14, 1870, with interest in such coin, from the day
" of the date hereof, at the rate of five per centum per annum,
" payable quarterly, on the first day of February, May, August
" and November in each year.

" The principal and interest are exempt from the payment of
" all taxes or duties of the United States, as well as from taxa-
" tion in any form by or under State, municipal, or local
" authority. Transferable on the books of this office.

" JOHN ALLISON,
" Register of the Treasury.

" Entered, C. F. B. Recorded, W. L. Act of July 14, 1870."

Which said falsely made, forged and counterfeited bond, obligation and security of the United States bore, then and there, the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there the endorsement in words and figures following, that is to say :

" Act of July 14th, 1870. Amended January 20th, 1871. Transfer No. . Original date, February 2d, 1878. Original No. " he, the said Selah Crosby Carll, at the time when and the place where he so, as aforesaid, passed, uttered and published the said falsely made, forged and counterfeited bond, obligation and security of the United States, then and there, well knowing the same to be then and there falsely made, forged and counterfeited, then and there against the peace of the United States and their dignity, and against the form of the statute of the said United States in such case made and provided.

FITTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the District and Circuit aforesaid, yeoman heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, feloniously, and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon said bank a certain altered obligation and security of the United States, to wit, an altered bond of the United States, which said altered bond, obligation and security of the United States was then and there in the words and figures following, that is to say : "Washington, September 1st, 1876, Office of the Secretary, Treasury Department, D. B. Funded Loan of 1891. Interest 4½ per cent., principal and interest payable in coin at the Treasury of the United States. The United States of America are indebted to Selah C. Carll or assigns in the sum of one thousand dollars +9791+9991+."

This bond is issued in accordance with the provisions of an Act of Congress, entitled : "An Act to authorize the refunding of the national debt, approved July 14th, 1870 ; amended by an Act approved January 20th, 1871," and is redeemable at the pleasure of the United States after the first day of September, A. D. 1891, in coin of the standard value of the United States, on said July 14, 1870, with interest in such coin from the day of the date hereof at the rate of four and a half per centum per annum, payable quarterly on the first day of December, March, June and September in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal or local authority. Transferable on the books of this office. W. P. Titcomb, Acting Register of the Treasury. Entered, T. E. J. Recorded H. M., Act of July 14th; 1870." and which said altered obligation and security then and there have the imprint and impression of the seal of the Department of the Treasury of the United States, and upon which said altered bond, obligation and security was then and there an endorsement in words and figures following, that is to say : "Act of July 14th, 1870, amended January 20th, 1871. Transfer No. , original date, September 7th, 1877. Original No. ," which said altered bond, obligation and security of the United States, before the same had been altered, was in the words and figures following, that is to say: "Washington, Sept. 1st, 1876, office of the Secretary, Treasury Department, D. B. Funded Loan of 1891, Interest 4½ per cent. Principal and interest payable in coin of the Treasury of the United States. The United States of America are indebted to Mrs. Abby D. Kingsley, Newport, R. I., or asssigns, in the sum of one thousand dollars +9791+ +9791+. This bond is issued in accordance with the provisions of an act of Congress entitled 'An Act to authorize the refunding of the national debt, approved July 14, 1870, amended by an act approved January 20, 1871, and is redeemable at the pleasure of the United States after the first day Sept., A. D. 1891, in coin of the standard value of the United Statos on said July 14, 1870, with interest in such coin from the day of the date hereof, at the rate of four and a half per centum per annum, payable quarterly on the first day of December, March, June and September, in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal or local authority. Transferable on the books of this office. W. P. Titcomb, Acting Register of the Treasury. Entered, T. E. J. Recorded, H. M. Act of July 14, 1870," and which said altered bond, obligation and security of the United States, before the same had been altered, bore the imprint and impression of the seal of the Department of the Treasury of the United States, and upon which said altered (before the same had been altered) was the endorsement, in words aud figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer No. Original date, September 7, 1877. Original No. ."

He, the said Selah Crosby Carll, at the time when, and the place where, he so, as aforesaid, passed, uttered and published the said altered bond, obligation and security of the United States, then and there, well knowing the same to be then and there altered as aforesaid. Then and there against the peace of the United States and their dignity, and against the form of the statute of the said United States, in such case made and provided.

SIXTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, feloniously, and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon the said Bank a certain falsely made, forged and counterfeited obligation and security of the United States, to wit: a falsely made, forged and counterfeited bond of the United States, which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there in the words and figures following, that is to say:

“ Washington, May 1st, 1871. Funded Loan of 1881. In-
“ terest 5 per cent. Principal and interest payable in coin at
“ the Treasury of the United States,

1000

“ The United States of America are indebted to Selah C.
“ Carll, or assigns, in the sum of one thousand dollars.”

19351 *19,351*

This bond is issued in accordance with the provisions of an
“ Act of Congress. entitled. ‘ An Act to authorize the refund-
“ ‘ ing of the national debt, approved July 14, 1870; amended
“ ‘ by an act opproved January 20, 1871, and is redeemable at the
“ ‘ pleasure of the United States, after the 1st day of May,
“ ‘ A. D. 1881, in coin of the standard value of the United
“ ‘ States, on said July 14, 1870, with interest in such coin
“ ‘ from the day of the date hereof at the rate of five per
“ ‘ centum per annum, payable quarterly on the first day of
“ ‘ February, May, August and November, in each year. The
“ ‘ principal and interest are exempt from payment of
“ ‘ all taxes or duties of the United States, as well as from
“ ‘ taxation in any form by or under State, municipal or local
“ ‘ authority, transferable on the books of this office.

“ ‘ JOHN ALLISON,
“ ‘ Register of the Treasury.

“ ‘ Entered C. F. B. Recorded W. L.
“ ‘ Act of July 14, 1870.’ ”

Which said falsely made, forged and counterfeited bond, obligation and security of the United States bore then and there the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there an endorsement in words and figures following, that is to say:

" Act of July 14th, 1870. Amended January 20th, 1871. Transfer No. . Original Date, February 2d, 1878. Original No. ," he the said Selah Crosby Carll, at the time when and the place where he so, as aforesaid, passed, uttered and published the said falsely made, forged and counterfeited bond, obligation and security of the United States, then and there, well knowing the same to be then and there falsely made, forged and counterfeited. Then and there against the peace of the United States and their dignity, and against the form of the statute of the said United States, in such case made and provided.

SEVENTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighteenth day of March, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon the said bank a certain falsely made, forged and counterfeited obligation and security of the United States, to wit, a falsely made, forged and counterfeited bond of the United States, which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there in the words and figures following, that is to say:

" 1877. 1907. Four per cent. consols of the United States.
" 4. 4. Principal and interest payable in coin at the Treasury
" of the United States.

" WASHINGTON, July 1st, 1877.

" The United States of America + 22259 + + 22259 +
" are indebted to Selah C. Carll or assigns in the sum of One
" Thousand Dollars.

" This Bond is issued in accordance with the provisions of
" an Act of Congress entitled ' An Act to authorize the refund-

" ' ing of the National Debt, approved July 14th, 1870, amended
" ' by an Act approved January 20, 1871,' and is redeemable at
" the pleasure of the United States after the first day of July.
" A. D. 1907, in coin of the standard value of the United States
" on said July 14, 1870, with interest, in such coin, from the
" day of the date hereof, at the rate of four per centum per
" annum, payable quarterly on the first day of October, Janu-
" ary, April and July in each year.

" The principal and interest are exempt from the payment
" of all taxes or duties of the United States, as well as from
" taxation in any form by or under State, municipal or local
" authority. Transferable on the books of this office.

" Office of the Secretary,
" Treasury Department.

" D. B. G. W. Scofield,
" Register of the Treasury.

" Entered, C. F. B. Recorded, P. H.
" Act of July 14th, 1870."

Which said falsely made, forged and counterfeited bond, obligation and security then and there bore the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there an endorsement, in words and figures following, that is to say:

" Act of July 14th, 1870. Amended January 20th, 1871. Transfer No. " Original date August 15, 1878. Original No. He, the said Selah Crosby Carll, at the time when and the place where he so, as aforesaid, passed, uttered and published the said falsely made, forged and counterfeited bond, obligation and security of the United States, then and there well knowing the same to be then and there falsely made, forged and counterfeited. Then and there, against the peace of the United States and their dignity, and against the form of the statute of the said United States in such case made and provided.

Eighth Count.

And the jurors aforesaid, on their oath aforesaid, do further present that Selah Crosby Carll, late of the City and County of

New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the eighteenth day of March, in the year of our Lord one thousand eight hundred and eighty, and the Southern District of New York and within the jurisdiction of this Court, unlawfully, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon the said bank a certain falsely made, forged and counterfeited obligation and security of the United States, to wit: a falsely made, forged and counterfeited bond of the United States, which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there in the words and figures following, that is to say:

" WASHINGTON, May 1st, 1871.

" Series of 1878; funded loan of 1881; interest 5 per cent; " principal and interest payable in coin at the Treasury of the " United States. The United States of America are indebted " to Selah C. Carll, or assigns, in the sum of one hundred dollars " +12076+ +12076+.

" This bond is issued in accordance with the provisions of an " Act of Congress, entitled ' An Act to authorize the refunding " ' of the national debt; approved July 14, 1870; amended by " ' an Act approved January 20, 1871,' and is redeemable at the " pleasure of the United States after the 1st day of May, A. D. " 1881, in coin of the standard value of the United States on " said July 14, 1870, with interest on such coin from the day of " the date hereof at the rate of five per cent. per annum, pay- " able quarterly on the first day of Februry, May, August and " November in each year.

" The principal and interest are exempt from the payment of " all taxes or duties of the United States, as well as from tax- " ation in any form, by or under State, municipal or local " authority. Transferrable on the books of this office.

" G. W. SCOFIELD,
" Register of the Treasury.

" Date of issue, Dec. 2, 1878.
" Entered, C. F. B.
" Recorded, W. L.
" Act of July 14, 1870."

Which said falsely made, forged and counterfeited bond, obligation and security of the United States then and there bore the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there an endorsement, in words as follows, that is to say: "Act of July 14th, 1870; amended "January 20th, 1871. Transfer No. ," he, the said Selah Crosby Carll, at the time when, and the place where he so, as aforesaid, passed, uttered and published the said falsely made, forged and counterfeited bond, obligation and security of the United States, then and there well knowing the same to be then and there falsely made, forged and counterfeited, then and there against the peace of the United States and their dignity, and against the form of the statute of the said United States in such case made and provided.

NINTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish, to and upon the said bank, a certain falsely made, forged and counterfeited obligation and security of the United States, to wit: a falsely made, forged and counterfeited bond of the United States, which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there in the words and figures following, that is to say:

"WASHINGTON, September 1st, 1876.

"Office of the Secretary, Treasury Department, D. B. Funded "Loan of 1891. Interest 4½ per cent. Principal and interest "payable in coin at the Treasury of the United States (M).

"The United States of America are indebted to Selah C. Carll

"or assigns in the sum of one thousand dollars, + 9792 +
" + 9792 +

"This bond is issued in accordance with the provisions of an "Act of Congress, entitled 'An Act to authorize the refunding "'of the National debt, approved July 14th, 1870, amended by "'an Act approved January 20, 1871,' and is redeemable at the "pleasure of the United States after the first day of September, "A. D. 1891, in coin of the standard value of the United States, "on said July 14, 1870, with interest in such coin, from the day "of the date hereof, at the rate of four and a half per centum, "payable quarterly on the first day of December, March, June "and September in each year. The principal and interest are "exempt from the payment of all taxes or duties of the United "States as well as from taxation, in any form, by or under "State, municipal or local authority. Transferable on the "books of this office.

"W. P. TITCOMB,
"Act'g Register of the Treasury."

"Entered T. E. J. Recorded H. M. Act of July 14th, "1870."

which said falsely made, forged and counterfeited bond, obligation and security, then and there bore the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely made, forged and counterfeited bond, obligation and security of the United States was then and there our endorsement, in words and figures following, that is to say: "Act of July 14th, 1870. Amended January 20th, 1871. Tranfer No. Original date, Sept. 7, 1877. Original No. " He, the said Selah Crosby Carll, at the time when, and the place where, he so, as aforesaid, passed, uttered and published the said falsely made, forged and counterfeit bond, obligation and security of the United States, then and there, well knowing the same to be then and there falsely made, forged and counterfeited. Then and there against the peace of the United States and their dignity, and against the form of the statute of the said United States in such case made and provided.

TENTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of

New York, in the District and Circuit aforesaid, yeoman, heretofore, to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon the said bank, a certain altered obligation and security of the United States, to wit, an altered bond of the United States, which said altered bond, obligation and security of the United States was then and there, in the words and figures following, that is to say: "Washington, Sept. 1st, 1876, office of the Secretary, Treasury Department, D. B. Funded Loan of 1891. Interest 4½ per cent. Principal and interest payable in coin at the Treasury of the United States, M. The United States of America are indebted to Selah C. Carll, or assigns, in the sum of One Thousand Dollars +9,850+ +9,850+

This bond is issued in accordance with the provisions of an act of Congress, entitled: "An act to authorize the refunding of the National Debt, approved July 14, 1870; amended by an act approved January 20, 1871; and is redeemable at the pleasure of the United States, after the first day of Sept., A. D. 1891, in coin of the standard value of the United States, in said July 14, 1870, with interest in such coin from the day of the date hereof, at the rate of four and a half per centum per annum, payable quarterly on the first day of December, March, June and September, in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation, in any form, by or under State, municipal or local authority. Transferable on the books of this office, W. P. Titcomb, Acting Register of the Treasury. Entered, T. E. J. Recorded, W. L. Act of July 14th, 1870," and which said altered bond, obligation and security bore then and there the imprint and impression of the seal of the Department of the Treasury of the United States, and upon which said altered bond, obligation and security was then and there the endorsement, in words and figures following, that is to say: "Act of July 14, 1870, amended January 20, 1871. Transfer No. , original date Sept. 10, 1877, original No. ," which said altered bond, obligation and security of the United States, before the same had been altered, was in the words and figures following, that is to say:

"Washington, Sept. 1st, 1876, Office of the Secretary, Treasury Department, D. B. Funded Loan of 1891. Interest 4½ per cent., principal and interest payable in coin at the Treasury of the United States, M. The United States of America are indebted to Mrs. Abby D. Kinsley, Newport, R. I., or assigns, in the sum of one thousand dollars +9,850+ +9,850+.

This bond is issued in accordance with the provisions of an Act of Congress, entitled, "An Act to authorize the refunding of the national debt, approved July 14, 1870, amended by an act approved January 20, 1871, and is redeemable at the pleasure of the United States, after the first day of Sept. A. D. 1891, in coin of the standard value of the United States, on said July 14, 1870, with interest in such coin from the day of the date hereof, at the rate of four and a half per centum per annum, payable quarterly, on the first day of December, March, June and September, in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form, by or under State, municipal or local authority. Transferable on the books of this office. W. P. Titcomb, Acting Register of the Treasury. Entered, T. E. J. Recorded, W. L. Act of July 14, 1870," and which said altered bond, obligation and security of the United States, before the same had been altered, bore the imprint and impression of the seal of the Department of the Treasury of the United States, and on which said altered bond, obligation and security of the United States, before the same had been altered, was the endorsement, in words and figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer No. . Original date Sept. 10, 1877. Original No. ," he, the said Selah Crosby Carll, at the time when and the place where he so, as aforesaid, passed, uttered, and published the said altered bond, obligation and security of the United States, then and there, well knowing the same to be then and there altered, as aforesaid. Then and there against the power of the United States and their dignity, and against the power of the statute of the said United States, in such case made and provided.

ELEVENTH COUNT.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit: on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York and within the jurisdiction of this Court, unlawfully, feloniously and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish, to and upon the said bank, a certain falsely made, forged and counterfeited obligation and security of the United States, to wit: a certain falsely made, forged and counterfeited bond of the United States, which said falsely made, forged and counterfeited bond, obligation and security of the United States, was then and there, in the words and figures following, that is to say:

"WASHINGTON, Sept. 1st, 1876.

"Office of the Secretary, Treasury Department, D. B. "Funded Loan of 1891. Interest $4\frac{1}{2}$ per cent. Principal and "interest payable in coin at the Treasury of the United States. "(1,000).

"The United States of America are indebted to Selah C. "Carll, or assigns in the sum of one thousand dollars +9851+ "+9850+.

"This bond is issued in accordance with the provisions of an "Act of Congress, entitled 'An Act to authorize the refunding "of the National debt, approved July 14th, 1870. Amended by "an Act approved January 20, 1871,' and is redeemable at the "pleasure of the United States, after the first day of September, "A. D. 1891, in coin of the standard value of the United States "on said July 14, 1870, with interest, in such coin from the "day of the date hereof, at the rate of four and a half per "centum per annum, payable quarterly on the first day of De- "cember, March, June and September in each year. The prin- "pal and interest are exempt from the payment of all taxes or "duties of the United States, as well as from taxation, in any

" form, by or under State, municipal or local authority. Trans-
" ferable on the books of this office.

" W. P. Titcomb,
" Act'g Register of the Treasury.
" Entered T. E. J. Recorded W. L. Act of July 14th, 1870."

Which said falsely made, forged and counterfeited bond, obligation and security of the United States then and therefore have the imprint and the impression of the seal of the Department of the Treasury of the United States, and upon which said falsely-made, forged and counterfeited bond, obligation and security was then and there an endorsement, in words and figures following, that is to say:

" Act of July 14th, 1870. Amended January 20th, 1871. Transfer No. . Original date Sept. 10, 1877. Original No. ," he, the said Selah Crosby Carll, at the time when and the place where he so, as aforesaid, passed, uttered and published the said falsely-made, forged and counterfeited bond, obligation and security of the United States, then and there, well knowing the same to be then and there falsely made, forged and counterfeited.

"Then and there against the peace of the United States and their dignity, and against the form of the statute of the said United States, in such case made and provided.

Twelfth Count.

And the jurors aforesaid, on their oath aforesaid, do further present, that Selah Crosby Carll, late of the City and County of New York, in the District and Circuit aforesaid, yeoman, heretofore to wit, on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and eighty, at the Southern District of New York, and within the jurisdiction of this Court, unlawfully, feloniously, and with intent to defraud the Bank of the Metroplis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish to and upon the said bank a certain altered obligation and security of the United States, to wit: an altered bond of the United States, which said altered bond, obligation and security of the United States was then and there, in the words and figures following, that is to say: "Washington, Sept. 1st, 1876, Office of the Secretary, Treasury Department,

D. B. Funded Loan of 1891. Interest 4½ per cent. Principal and interest payable in coin at the Treasury of the United States, 10 M.

The United States of America are indebted to Selah C. Carll, or assigns, in the sum of one thousand dollars +9852+ +9852+.

This bond is issued in accordance with the provisions of an Act of Congress, entitled "An Act to authorize the refunding of the national debt, approved July 14, 1870, amended by an Act approved January 20, 1871," and is redeemable at the pleasure of the United States after the first day of September, A. D. 1891, in coin of the standard value of the United States, on said July 14, 1870, with interest in such coin, from the day of the date thereof, at the rate of 4½ per centum per annum, payable quarterly, on the first day of December, March, June and September in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation, in any form, by or under State, municipal or local authority. Transferable on the books of this office. W. P. Titcomb, Acting Register of the Treasury. Entered, T. E.J. Recorded W. L. Act of July 14th, 1870, and which said altered bond, obligation and security then and there bore the imprint and impression of the seal of the Department of the Treasury of the United States; and upon the said altered bond, obligation and security was then and there the endorsement, in words and figures following, that is to say: "Act of July 14th, 1870, amended January 20th, 1871. Transfer No, ——, original date, September 10, 1877, original No. ——, which said altered bond, obligation and security of the United States, before the same had been altered, was in the words and figures following, that is to say: 'Washington, September 1st, 1876. Office of the Secretary, Treasury Department, D. B. Funded Loan of 1891. Interest 4½ per cent.; principal and interest payable in coin at the Treasury of the United States, M. The United States of America are indebted to Mrs. Abby D. Kinsley, Newport, R. I., or assigns, in the sum of one thousand dollars +9852+ +9852+.' " This bond is issued in accordance with the provisions of an act of Congress entitled "An Act to authorize the refunding of the National Debt. Approved July 14, 1870, amended by an act approved January 20, 1871," and is redeemable at the pleasure of the United States after the first day of September, A. D. 1891, in coin of the standard value of the United States on said July 14, 1870, with interest in such coin from the day of the date hereof at the rate of four and a half per centum per annum, payable quarterly, on the first day of December, March, June aad September in each year. The principal and interest are exempt from the payment of all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal or local authorities. Transferable on the books of this office. W. P. Titcomb, Acting Register of the Treasury. Entered. T. E. J. Recorded, W. L. "Act of July 14th, 1870," and which said altered bond, obligation and security of the United States, before the same had been altered, bore the imprint and impression of the seal of the Department of the Treasury of the United States, and thereon was the endorsement in words and figures and figures following, that is to say:

"Act of July 14th, 1870. Amended January 20th, 1871. Transfer No. . Original date September 10, 1877. Original No. ," he, the said Selah Crosby Carll, at the time when and the place where he so as aforesaid passed, uttered and published the said altered bond, obligation and security of the United States, then and there well knowing the same to be then and there altered as aforesaid, then and there against the peace of the United States and their dignity, and against the form of the statute of the said United States, in such case made and provided.

Stewart L. Woodford,
United States Attorney,
Southern Dist. of New York.

The defendant, on being arraigned, on the 21st day of June, 1882, before Mr. Justice Benedict, offered the following plea in abatement:

UNITED STATES
vs.
SELAH C. CARLL.
} Indictment 20 June, 1882.

And the said SELAH C. CARLL, having heard the said indictment read, and protesting that he is not guilty of the premises charged in the same, saith: That the said United States ought not further to prosecute the said indictment against him because he saith, that in the Circuit Court of the United States for the Southern District of New York, heretofore, to wit, on the eighth day of March, in the year one thousand eight hundred and eighty-one, an indictment was presented against him, the said Selah C. Carll, wherein and whereby he was charged with the identical offenses with which he is charged by the present indictment; and because, to the said indictment so as aforesaid presented against him, the said Selah C. Carll, heretofore, to wit, on the fifteenth day of June, in the year one thousand eight hundred and eighty one, pleaded that he was not guilty of the offenses therein charged against him; and thereupon, heretofore, to wit, on the twentieth day of October, in the year one thousand eight hundred and eighty-one, a jury was duly impanelled to try the said issue, and, after hearing testimony and the charge of the presiding Judge, the said jury, heretofore, to wit, on the twenty-fourth day of October, in the year one thousand eight hundred and eighty-one, by their verdict of guilty, convicted the said Selah C. Carll of the offenses in said indictment charged, and that thereby he, the said Selah C. Carll, was put in jeopardy, under the said indictment, as by the record thereof remaining in the said Court more fully and at large appears. And the said Selah C. Carll further saith, that he, the said Selah C. Carll, and the Selah C. Carll so put in jeopardy, are one and the same person and not other or different, and that the said Selah C. Carll is ready to verify—wherefore he prays judgment that by the Court here, he may be dismissed and discharged from the said premises in the said present indictment specified.

By his attorney,
J. HOPKINS STEWART.

At the time of the filing of the plea in abatement, the record of this Court, filed in the office of the Clerk, showing the indictment and record upon which said plea was based before the Court, and reference is made thereto, and the same was by the said Justice overruled and an exception taken.

The defendant then pleaded not guilty, and was subsequently and on the 19th day of October, 1882, placed upon trial .before the said Justice and a jury.

APPEARANCES :

WILLIAM P. FIERO, Assistant United States Attorney, for the Government.

A. J. DITTENHOEFER, A. H. PURDY, and W. B. COCHRANE, for the defendant.

During the empanelling of the jury, defendant's counsel challenged permptorily Messrs. Solomon and Chatterton, jurors. After other jurors had been sworn, and before the twelfth juror had been called, the defendant's counsel asked leave to withdraw the challenges to those two, to which the District Attrrney objected, leave was refused. Defendant excepted. After ten jurors had been challenged peremptorily by the defendant, the twelfth juror was challenged peremptorily by the defendant's counsel. The Court refused to allow the challenge, on the ground that the defendant's right to peremptory challenge had been exhausted, and an exception was taken by defendant's counsel. The twelfth juror was thereupon challenged by the defendant's counsel to the favor upon the ground that he was connected with a savings bank, and the bonds in question were realized upon as collateral from a bank, and also upon the ground that the juror was personally acquainted with one of the directors of the Bank of the Metropolis alleged in the indictment to have been defrauded. The challenge was overruled by the Court, and defendant's counsel excepted.

Defendant's counsel thereupon moved to quash and set aside the indictment on the ground that the defendant had been once tried on another indictment for the same charge, and convicted, which conviction the Supreme Court of the United States had reversed ; and that the old indictment must be disposed of before the present trial could proceed.

The motion was denied and exception taken.

The jury were then sworn.

A motion was thereupon made by defendant's counsel that the issues raised by the plea in abatement be first tried.

The motion was denied, and defendant's counsel excepted.

Counsel for the defendant admitted that the Bank of the Metropolis was a State bank, duly incorporated as alleged in the indictment.

THEODORE ROGERS, a witness called in behalf of the plaintiff, being duly sworn, testified as follows :

I am cashier in the Bank of the Metropolis and know the defendant. About April 21, 1879, defendant applied for a loan of $5,000 on a 5 per cent. Government bond of 1881 as collateral ; a power of attorney, attached to the bond, was given at the same time. He gave his note and we made the loan. The note was renewed several times upon the same collateral ; either at the time of the original loan or the first renewal. I remarked to him that he had some pretty good collateral, and he replied "Yes, sir;" that it was some that he had saved from his old matters or old business.

About September 20, 1879, the defendant applied for another loan, handed me another $10,000 bond, I think 6 per cent. of 1881, with a transter and made out his note for $9,000 which amount we gave him.

The paper now handed me is the bond and is in the same condition it was at the time he gave it to me with the power of attorney attached. The note was renewed but never paid. About Dec. 19, 1879, he gave me a $10,000 5 per cent. of 1881, upon which we loaned him $9,000. The paper now handed me is the bond. The note was renewed but never paid. About Feb. 24th he applied for another loan. I was absent at the time it was made. The defendant left at the bank some $12,000 in different bonds. The bond 8967, being a $5,000 5 per cent. of 1881, mentioned in the 4th count of the indictment, was given as part collateral for the loan. He received in all at that time $12,000 on $12,000 collateral. The bond is in the same condition.

The bond 9791, 4½ per cent., is part of the collateral for the $12,000 loan, and is in the same condition. When it was left at the bank, Selah C. Carll aypeared on it as payee. The transfer on the back was not on it at the time.

The bond 19,351 formed part of the collateral for the $12,000 loan, and is in the same condition, excepting there was no writing across the face and it did not have any transfer on the back.

About March 18, the defendant came to the bank and we let him have $12,000; he deposited bonds as collateral. The bond 22,259, mentioned in the 7th count of the indictment, is part of the collateral. It had a power of attorney attached. The paper handed me is the bond, and is in the same condition. The bond 12,076, mentioned in the 8th count of the indictment, is one of the bonds given for the $1,200 loan of March 18th; but it has been cancelled; the writing on the face and the transfer on the back was not on it at the time. The bond 9,792, mentioned in the 9th count, was one of the bonds given for the loan of February 24th; also bonds 9,850, mentioned in the 10th count; also 9,851 in the 11th count, and bond 9,852 mentioned in the 12th count, formed part of the loan of February 24th, is in the same condition, except cancellation and the writing across. I have the notes (producing them). The form of the note is to me as cashier, but the money passed belongs to the bank. When the bonds were left in the bank the numbers of each bond were put in the separate loan for which it was collateral, the bonds put in an envelope, passed by the discount clerk to me and I locked them up in the safe. The clerk retained the note as the money of the bank, and also my receipt of the collateral.

The signature of Mr. Carll on the notes is admitted by the defense.

Notes offered in evidence by District-Attorney.

Objected to as immaterial and irrelevant, and on the ground that the defendant is not charged with passing a forged note.

CROSS-EXAMINATION:

I first saw the defendant in April, 1879. I won't be certain that it was the occasion when he presented me the bond. He was introduced to the bank first by his brother. George Edward Carll, I think in April, 1879. I don't recollect whether he called to open an account with the bank, and could not say whether a loan was made to him at the time of the introduction. Some time may have elapsed between the introduction and the first loan; I can't say positively. The defendant came to me as cashier at the time of the first loan, and I then recognized him as the person who had been introduced to me by his brother. My impression is that at the time of the first loan he had not opened an account with the bank, but I am not sure. I made no inquiry about him at the time, excepting such information as I got from the introduction. I had known him previously, but not personally, as a member of the firm of Husted & Carll, of Brooklyn, carpet business, several years before these transactions. He stood well, and was of a good character, and that impression was on my mind at the time of the loans.

At the time of the loan he presented the bond but not the note; the note was made up by us. I told him we would loan him the money he asked for on the bond, but did not inquire of him what business he was in, nor what he wanted the money for, but immediately said I would loan the money. I looked the bond over merely as a government bond. I made no marks of identification on it, but a memorandum of the number and the issue of the bond was made on the note. I referred him to the discount clerk to have the note made out. Had I not known Mr. Carll from the introduction, and from having been in business, I would not have made the loan without inquiring, simply because the bonds offered were governments.

There was no loan made to Mr. Carll on the paper now shown me, purporting to be a note, at its date; this paper is a renewal of one of the originals, which is in Mr. Carll's hand. The original note is dated April 21, 1879, and is at 60 days, and the bond was left with that note. When it became due it was changed to the defendant's account as a voucher; but the bond was not returned to him but was kept by the bank as collateral for the renewal note. The bond did not leave the bank. This is the first renewal note and is dated June 23d; it became due three months from its date, Sept. 26, 1879. This first renewal note was paid by the second renewal, the bond still remaining in the possession of the bank. The third renewal note was dated Sept. 29 for four months, making it due January, 1880. This is the note (referring to note in his hand). The last renewal was paid by a fourth renewal. The last renewal note and the bond never left the bank from the time the first note was given until it came into the possession of the District Attorney; and in the meantime there were four renewals. From the time of the first loan until the last renewal I saw the defendant once in a while when he came in to make a deposit as well as to get a loan. He would come himself each time with the renewal. I think the president, Mr. Schell, knew Mr. Carll during the business transactions with him. After the first bond was left with us I saw it once before these troubles arose. After the discount clerk gave me the bond to put in the vault, I have no recollection of seeing it until this trouble arose. The vault is a private one appertaining to my desk; no one has access to it but the president and myself. The box in which the securities were kept in the private vault were frequently taken out during the time of the renewals. About the time of making the loan, my impression is, that the defendant opened a bank account with us. Some of the money loaned was left on deposit and some checked out from time to time by him. I made no inquiry at the Treasury Department about the registered bonds. From the face of it, I assumed that it was correct and made no further inquiry.

Q. If the defendant had asked for a loan at one time on all these bonds, you would have made it, would you not ?

A. Well, I presume I might have.

Court: You may show what he did. I rule out the question as to what he would have done.

Defendant's counsel excepts to the ruling.

Q. From what you knew of the defendant at the time, if he had asked for a loan of $50,000 on similar collaterals—on Governments like these—would you have given it to him ?

Objected to. Sustained. Exception taken.

Pending the renewals of the first loan, the defendant presented another bond; this second loan was made in September, 1879; he gave a note. The paper handed me is the renewal for four months the first note for the second loan was dated Sept. 20, 1879, at four months. There was only one note for the loan and one renewal. The bond never left the possession of the bank from the time it was first given to this second loan. My impression is that I went with the defendant to the discount clerk and told the clerk to draw the note and have the defendant sign it. I cannot say from my present recollection whether or not the bond on which the second loan was made was given by the defendant to me personally. It was either handed to me or to the discount clerk under my instructions. There is no mark of identification on the bond, made either by myself or that any bank officer put upon it. The last renewal of the first note was not paid when it became due; the defendant did not ask for another renewal of the first or of the second loan. The third loan in point of time was made December, 1879, at which time notes for the first two loans were out; at the time of the third loan, Dec. 19, the defendant gave a note which was not renewed; it was a four months' note.

During all this time he was drawing against his bank account.

The next loan was made February 24, at which time there was outstanding notes immatured on the prior loans. For this first loan a note was given by the defendant, dated February 24, at four months; it was not renewed. The bonds collateral to the third loan were either given to me personally by the defendant or I went to the discount clerk with him and instructed the clerk to make out the note for the defendant to sign, who handed the bonds to the discount clerk. I would not examine the bonds then, but would for the first time when they were put in the envelope by the discount clerk with the endorsement on them. The bonds given on the 4th loan had no marks of identification, either made by myself or by any officer of the bank. After the discount clerk made out the notes for the loans I would not see them until later in the day, but I have no recollection of ever examining them to see whether the description of the bonds in the notes corresponded with the bonds themselves. The fifth loan was made March 18th, for $1,200, for which a note was given, dated February , at four months, which was not renewed. At the time of this loan there was five or six of Mr. Carll's notes outstanding, unmatured. On the first collateral there was $5,000; then there was a renewal at $3,000 additional, besides $5,000, making five or six notes outstanding in all and in amount, about $40,000. There is no personal mark of identification on the bond for this last loan. From the time the bonds were given, I did not see them until these troubles came on. The amounts of the various loans were left by the defendant to his credit in the bank, and he checked against them. He also made deposits in our bank other than the loans.

I first heard about the bonds being irregular in form about a week or ten days after the last loan, and up to that time had not the least suspicion. Excepting the loans, the defendant owed the bank nothing; excepting that he was an endorser on some small notes. There was other paper discounted for him as treasurer of a boiler company; the discounts were not made for him personally, but I required his indorsement on them from the fact that I did not know the other concern as well as I knew him. During all the time I have mentioned, the defendant did not default on the bank, and none of his notes went to protest. I cannot say how frequently he came to the bank. I would see him once in a while, perhaps, as he passed out. I knew him well enough to identify him, and during all the times mentioned I made no further inquiries about him or his financial condition of any one, but relied upon my previous knowledge of him, which was very favorable.

Re-direct Examination by Mr. Fiero:

The description of the bonds were inserted in the notes always before signing by the defendant. When the renewals were made, nothing was said about the collateral remaining, excepting the defendant asked me if I would like to renew it on the same collaterals, and it was so renewed.

Q. During all this time, at the making of the loans and the renewal of the loans, did the bank have in its vaults, or otherwise, any bonds of the description of these, the numbers, amounts, and the same payee's name—general description—any bonds like them?

> Objected to by defendant's counsel as immaterial. Objection overruled. Exception by defendant's counsel.

A. No, sir; none but these. These were the only ones, and had the name of Selah C. Carll as payee at the time.

RE-CROSS EXAMINATION BY MR. DITTENHOEFER:

I did not make out the notes and did not see them until they were returned to me signed, later in the day. I did not compare the description of the bonds with the description in the notes until later on. There were in the vaults of the bank, during the time of these loans, bonds of the same issue, denomination and amount.

Mr. Fiero, counsel for Government, offers in evidence bond 14,481, with accompanying note.

Objected on the ground that it is not a false, forged and counterfeited instrument.

Bond admitted in evidence, marked Exhibit 1.

See 1st Count of Indictment.

The District Attorney thereupon offered in evidence bond 29,438.

Objected to by defendant's counsel, on the ground that it is not conformable to count in the indictment, inasmuch as the Court charges that there is a false, forged and counterfeited obligation and security of the United States. And the bond offered in evidence has not been proved to be such bond, and it is submitted that they should offer them for identification.

Objection overruled; exception taken by defendant's counsel.

Bond marked Exhibit No. 4.

DEFENDANT'S COUNSEL, MR. PURDY: I object now to the introduction of these bonds in evidence, on the ground that there is no evidence before the Court that they are false, forged or counterfeited, and that there is no evidence before the Court that they are the bonds mentioned in the indictment.

The Court overrules the objection, and defendant's counsel excepts.

Counsel for the defendant states that this, my objection, applies to all the bonds.

The remaining bonds described in the indictment and in the form thus described, with the accompanying powers, were then put in evidence by the counsel for plaintiff and marked Exhibits 7 to 21, inclusive, subject to the last objection.

GEORGE H. NORMAN, a witness called on behalf of Government being duly sworn, testified as follows:

BY MR. FIERO:

I reside at Newport and in Boston; Mrs. Abby D. Kinsley is my mother-in-law, and Bradford Norman is my minor son; I bought for them bonds from the Government about six or seven years ago.

Q. I show you Exhibit 10, No. 8967; I ask you if you will identify the bond and say whom it was issued to?

> Objected to by defendant's counsel; overruled and exception.

A. Mrs. Abby D. Kinsley.

I recognize it by its number; also by my own handwriting on the bond before it was stolen from my house on the 11th of February, 1880. These bonds were kept in a tin box of mine, folded up about that size (indicating), and on just this end the name of each of the children, whoever they belonged to. This one has "mother" on it in my handwriting in pencil, and was put on before they were stolen. The bond is now Selah C. Carll. The assignment on the back was sent back to me by the Government on August 29, 1881, to be assigned for reissue for the payment for redemption. My mother's signature is on it, signed in my presence August 29, 1881.

The bond No. 9,791, Exhibit 12, I know I bought by the number on it. My mother signed the transfer in my house Jan. 5th, 1882, when the Government recovered them from some one and sent them back to me. Mrs. Kingsley and the sub-treasurer signed it in my presence. It was for a renewal; I got a new bond for this in my possession now. When I purchased it for my mother the name Mrs. Abby D. Kingsley was in it. I see part of the original name of my mother with the name Carll written over it.

Bond 19,351, Exhibit 13, I purchased for my mother-in-law. Her transfer is on the back of it, having been redeemed by the Government. It was stolen with the others. They were all stolen at once.

The bond 12,076, Exhibit 17, was issued to my son Bradford.

It has my pencil mark on it, made before it was stolen. The signature on the back was made Jan. 2, 1882, after the return to me by the Government for a new issue. It now has the name Selah C. Carll in it. I collected the interest and endorsed the certificates on my son's, and my mother endorsed her own and received the interest direct. The interest has always been drawn on the bonds, the same, precisely, as if they had never been stolen.

Bond 9,792, Exhibit 18, was issued to my mother-in-law and transferred for renewal, for which we have a new issue. Before it was stolen it was in the name of Abby D. Kinsley.

The bond 6,850, Exhibit 19, was the same as the rest and also reissued.

BY MR. DITTENHOEFER (defendant's counsel):

When they were stolen there was no assignment.

BY MR. FIERO:

The original name of the payee was Mrs. Abby D. Kinsley. Bond 9,851, Exhibit 20, is of the same class; 9,852, Exhibit 21, is one to my mother-in-law. The bond in the name of my daughter, Abby, that now shows Selah C. Carll without any number whatever, I could identify by her name on the back in my handwriting.

This bond, No. 12,071, now offered in evidence, marked Exhibit 22.

The assignment and everything was made at the same time to Abby K. Norman, and it is now Selah C. Carll.

Bond 23,692, here offered in evidence, marked Exhibit 23.

CROSS-EXAMINATION:

I have suffered no material damage from the robbery except some costs. I am satisfied, as I have had duplicate bonds issued to me, and have lost no interest in any shape or form.

It is admitted by the Government that duplicate bonds were issued, and that the interest has been regularly paid;

that ~~he~~ it has suffered no personal injury, and that none of the parties to whom these bonds were originally issued have suffered any injury.

At the time of the robbery, in addition to these bonds, others were stolen. City of New York bond, about $8,000, which has been reissued. No other Government bonds, but some two or three checks given to my children, and a number of other negotiable paper was stolen. I have recovered none of them.

Q. Have you discovered who the thieves were?

A. No, not by law; I have no doubt who the thief was, but not by law, it has not been proven.

Q. There has been no complaint made?

A. There is no doubt that the man is in prison for life that stole them, for murder.

Q. Give me such knowledge as you have as to who stole them; that property; including these bonds?

Objected to by Government. Sustained. Exception by defendant's counsel.

A. On the bond, marked Exhibit 17, No. 12,076, there appears the name of Selah C. Carll, as payee; I cannot tell from looking at the face of the bond what the name other than Carll was there as payee, except the letter of the Government after the recovery of the bond, saying that it contained the other name. The bond on its face does not present any evidence to me that it has been altered. I kept a record of the numbers of the bonds in a book and in a memorandum paper. I saw the Government agent sign after the bonds were recovered. When I testified I could see the name Bradford distinctly on one of the bonds I meant that a portion of the word Bradford which had been written by me in pencil could be seen with a strong glass.

BY MR. PURDY, (defendants counsed):

Bond No. 9,791, Exhibit 12, now shown me, is the same one that I testified to, I think. I see the name, Mrs. Abbey D. Kinsley, written in there, but the handwriting I do not know. I see the name, Selah C. Carll, scratched out. All this was done after went out of my possession.

By Mr. Fiero:

The Bradford one I have looked at, but cannot see the tracing, I don't think it was Bradford; I cannot tell what name it was.

David McConigal, a witness on behalf of the plaintiff, being duly sworn, testified as follows :

I am a Deputy Sheriff of the City and County of New York. I had a civil order of arrest for the defendant in this case in April, 1880, and endeavored to arrest him. I went to his house two or three times along about the first of April, but did not see him, although I watched the house. I arrested him, finally, at a hotel in Broadway, the name of which I don't remember, in the evening. When I arrested him, he asked me, on what charge. I told him I did not know; that I had an order, and the bail was $50,000; handed him a copy of the order and said if you read the papers you will see for yourself. We then walked down the street with a friend of his. It was Saturday night; we stayed at a hotel till Monday. During Sunday we were in conversation about the case. I asked him how he got into the difficulty. He said on my way down Fifth avenue I met a friend one morning; my friend said to me "Why are you walking down." He said, "I walk because money is scarce and I have nothing to do and five cents saved is five cents made." That the man said to him, "I think I can get you a chance to make some money," to which he replied, "I would like to get a chance because I am in need of money." Well," said he, "if you go to certain place on Chatham street you will meet a gentleman that will give you a chance." He told me he went there and he did not meet the man that morning; but on another morning did, and he was given a bond, a $10,000 government bond, I think it was. Defendant told me he was not familiar with government bonds and they wanted him to borrow some money on it. He went down to Wall street to a broker's office and and asked him to make a loan on the bond, and was informed by the broker that the bond was registered, and that his name was not on it; that he would have to have his name inserted, and then come back and the loan would be made; that he went back to the man who had given the bond to him and returned it, saying that he did not know anything about the business and did not want any more to do with it; but that eventually they gave him a bond and he went and raised money from the Bank of the Metropolis.

Q. What next did he say, if anything?

A. Well, there is so much said by people whom I arrest, and I pay so little attention to it, that I really do not remember.

Q. Was there anything said about a $500 bond?

Objected to. Overruled. Exception.

A. There was something said about a $500 bond and somebody going to Washington and getting his name inserted in a $500 bond. That is to say, a genuine bond. He did not say for what purpose.

Q. Refresh your memory on the question of the $500 bond; for what purpose did he have his name inserted in that; what he said about the purpose for which he had his name inserted in the genuine $500 bond?

A. I say I cannot remember exactly; I know he said there was a bond got in Washington with his name—a $500 bond with his name inserted in it, and brought on and given to him, I think; after that he got the other bonds and went to the bank and negotiated them.

BY MR. DITTENHOEFER:

He said they told him they had had it inserted in Washington, and it was handed to him in New York, with his name in it.

BY MR. FIERO:

He did not say what was done after he got the $500 bond, more than that, he had received the other bonds and went to the bank and got loans to the extent of some $45,000, I think; but he did not say how much he got of this amount, except that he had invested most of it in lumber down in Florida, that he had the contract for furnishing the lumber for Brooklyn bridge.

CROSS-EXAMINED BY MR. PURDY:

It might have been Georgia instead of Florida; he did not mention to me the name of the man he met in Chatham street.

I held the defendant in $50,000 bail; I told him that was the amount. I was with him two days and two nights before he was put in prison, and during this time he explained to me all of these transactions; told me how the bonds that now had been discovered to be stolen or forged came into his possession. I made no promise to him at any time. The statements were not in the nature of a confession, but were merely a conversation made in answer to my asking him how in the world did you get into this difficulty? and he told me; he mentioned to me at the time a man by the name of Boughton or Broughton. He did not, to my recollection, tell me that he got these securities from a man by that name; but if I recollect aright, this person was interested in the lumber business. The lumber business was yellow pine, Georgia; and Boughton was interested with him in it.

In regard to the $500 bond, I understood him to say that other persons went to Washington and bought the bond; but he did not say for what purpose it was bought. He never admitted to me that he knew the bonds to be forged or stolen.

He was not discharged on bail, but was put in Ludlow Street Jail, and kept there for over a year on the order of arrest.

During the conversations I had with him while he was in my custody he told me several men were interested with him; that he had a boiler shop in Cortlandt street. I do not recollect his mentioning the name of Mr. Stewart as being interested.

I arrested him in the bar-room of the hotel at the bar. There was a gentleman with him at the time, but I do not recollect the name. He made no attempt to deny that he was the defendant. I had only been to his house three times.

JOSEPH E. MASTERSON, a witness on behalf of the Government, being duly sworn, testified as follows:

BY MR. FIERO:

I assisted the deputy sheriff in the arrest.

Q. Had you endeavored to arrest the defendant before that?

Objected to. Overruled. Exception.

A. Well, sir, we endeavored to find him.

Q. Did you attempt to find him?
A. Yes, sir.
Q. State what you did?

> Objected to by defendant's counsel. Overruled. Exception by defendant's counsel.

A. We did not find him at the house, but at the Grand Hotel.
Q. How many attempts did you make to find him?

> Objected to as immaterial. Overruled. Exception by defendant's counsel.

A. I began looking for him on March 21, and made inquiries at 34 Cortlandt street, his place of business; watched there constantly from that time until April 3d, but he never came there. We watched his house, but he did not come there. I had two assistants that watched the house constantly, but I did not watch it.

BY MR. FIERO:

I have heard the witness last on the stand and remember the arrest. I pointed Carll out to McGonagil in the bar-room, who served the defendant with a paper; told him what it was for. We then went from the bar-room to the lobby of the hotel. Mr. Carll and his friend and McGonigal sat there on the settee talking for half an hour. We then went to Mr. Lord's by request of Mr. Carll, who was with us. We went to see what could be done about arranging the bail. Mr. George De Forrest Lord was out of town, but Mr. Carll interviewed Mr. Frank Lord. I do not know what occurred. I got on a car and left them, and they proceeded south towards Fourteenth street. I heard no further conversation.

I am positive Mr. McGonigal said to Carll at the time of the arrest was made that the paper was a process of the Court what the arrest was for. The arrest was made in the public bar-room of the Grand Hotel, corner of Thirty-first street and Broadway, on the 3d of April, 1880.

We watched at his house, but did not watch him individually. I searched 34 Cortlandt street; it was occupied by him at the time; he had boiler machinery for sale there. His name and sign were not out, but I know it was the place, because I inquired for him, and they told me he had not been down that day. I inquired at his house and they referred me to 34 Cortlandt street as his place of business. It was on the main floor of 34 Cortlandt street. I did not stay at 34 Cortlandt street watching all day, but only until about 5 o'clock; from about half-past 12 till about 5 o'clock, I think. I did not return until the next morning about half-past 7, remained until abourt 11 of that morning and then went away until towards afternoon—about two or three o'clock, and remained until six; and again the next day about 12 o'clock until about 4. Again went to Cortlandt street about noon on April 3d, the fourth day, and remained till near 5 o'clock. Was away in the meantime about three-quarters of an hour.

Besides Cortlandt street I went to Forty-eighth street on the night of March 31st—got there about seven o'clock; remained there until twelve o'clock. Remained about fifty feet from the house. I inquired at the house; some lady, who came to the door, whom I asked if Mr. Carll was in, replied I could find him at 34 Cortlandt street. She replied that he was not in and could be found at 34 Cortlandt street. I did not tell her my purpose in inquiring; for all I know he was in the house the second day. I went to Forty eighth street on the third day—did not inquire in the house whether he was in, but walked up and down on the opposite side, but did not see Mr. Carll; did not see him at any time at Forty-eighth street. Went there the fourth day, but made no inquiry at the house, and did not see him. Had I seen him, I would only have known him from description, because I had never seen him before the arrest to my recollection.

I will not swear he did not pass in the street while I was at Forty-eighth street, but I will swear that I did not see him. I am a private detective.

Henry R. Hatfield, a witness on behalf of the Government, being duly sworn, testified as follows:

By Mr. Fiero:

I am discount clerk in the Bank of the Metropolis. I have a memorandum from the discount book kept by me. (Witness consults book.) Turning to April 21, 1879, in a book in my handwriting, these papers were received at that time. This is the bond which I identify. Bond 19,294 was left September 20th.

By Mr. Purdy:

I cannot testify without referring to the book; my memory is not sufficient, and my whole evidence is predicated upon what I see in the book; and because it is in the book I think it is so, as it is in my handwriting made at the time.

By Mr. Fiero:

Bond 29,438 was left December 19th by Mr. Carll. Bonds 8,967, 9,791, 9,792, 9,850, 9,851, and 9,852 were left by Mr. Carll February 24th, at the time he got the $12,000 note discounted, which note is in my handwriting and signed by Mr. Carll in my presence. Bonds 22,259 and 12,076 were left by Mr. Carll March 18th; and the note for $1,200, discounted at that time, is in my handwriting.

Cross-examined by Mr. Purdy:

I have been discount clerk five or six years. It is the custom for me as discount clerk to make out the notes at the times loans are made. Discounts have been made on governments as collateral before. There was nothing unusual that I know of about Mr. Carll's transactions with the bank. I looked at the bonds to get the numbers to put on the notes. I saw they were registered bonds and that Mr. Carll's name was in the body of them. We had previously discounted on registered bonds as collateral; about the loans I do not know, as they are not in my charge. We have registered bonds of the description of the ones in suit, and have loaned on such bonds. I don't know who collected the interest on them. The bank did not collect the interest.

I have been in the banking business fifteen or twenty years. I never knew, in the course of my experience, a case where a man with a forged bond with his name written in the body of it offered it for negotiation. I had no doubt that these were the property of Mr. Carll. I don't know who collected the interest.

There was a power of attorney to sign the bonds given at the time the loans were made to Carll which accompanied the bond. I did not fill it out nor did I see Mr. Carll sign it.

ROBERT SCHELL, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By MR. FIERO:

I am President of the Bank of the Metropolis, and was during these transactions. I remember being present on the 24th of February, when some bonds were passed over to the bank by Mr. Carll, and have heard the testimony of witnesses in that regard; that is to say, I was in the bank. The first time I discovered any difficulty about the bonds was in the latter part of March, 1880. I thought we had a number of bonds, and thought that I had better take them down to the Sub-treasury, and if it was a corect transfer and the powers were correct. I sent for Mr. Carll to come and see me. He came in March, but I cannot recollect the day. I told him I had been to the Sub-treasury and heard the transfers were not proper, and wished him to go down with me and have them made so. He said he could not go that day, being about 2 o'clock in the afternoon, but he would call next morning, but did not; and I never saw him since that until in Court upon this trial; but he sent me a note, as follows: "New " York, March 19. Mr. Schell: I am sorry to say I was unable " to reach the bank in time this P. M. to carry out my engage- " ment as I said. However, I will take up all the notes in your " bank early in the week and then commence anew. You can " rely on my doing so. Very truly yours." But he did not do so.

Letter offered in evidence, marked Exhibit 24.

CROSS-EXAMINATION BY MR. PURDY:

I am generally familiar with the transactions of the bank. The total amount of money borrowed was in the neighborhood of $43,000. I cannot say how long I knew Mr. Carll; his account was in the bank two years, I think; whether previous to that I don't know. I knew Mr. Carll by introduction. I supposed his character was good, and I supposed him to be a business man.

I supposed he was responsible, or I would not have made the loan. I presumed the securities were perfectly good. I have loaned money, and do still, on registered bonds. I cannot say whether I examined the bonds at the time of the loans or not; I think I did. I knew they were registered bonds, and thought Mr. Carll was the owner, and therefore loaned him the money. The loans were made to him pretty nearly a year, and during that time I did not suspect that the bonds were forged or stolen at any time, although I had means of ascertaining. I did not send to Washington, but assumed they were genuine. The experts in the bank supposed they were so. I made no inquiry as to their genuineness. The first I began to suspect any irregularity was the 17th or 18th of March, when I sent for Mr. Carll. I wrote him the note and told him that the Sub Treasurer objected, as the powers did not say "for value received," and in case of Mr. Carll's death they would not be a good transfer. Feeling a little alarmed, I sent for him to have them inserted. He called and promised to come the following morning to go down to the Sub-Treasury with me, but never did. Instead, he sent me a note which I have read. I did not consult with our lawyers in regard to the matter at that time. We had him arrested in a civil suit, put under $50,000; I do not know whether the order of arrest was subsequently withdrawn; I presume it was so. About three months afterwards we made a criminal charge in this Court.

BY A JUROR: When, where and how were these powers of attorney executed at the time of these loans?

A. I cannot say, sir; they came with Mr. Patterson, the Sub-Treasurer's signature, and we thought that that was sufficient.

Q. They were brought to the bank with the bonds?

A. With the bonds; they were not executed.

COURT: Are they compelled to be executed by Mr. Patterson?

A. No, sir; the District Attorney or cashier of a national bank.

GEORGE DE FORREST LORD, a witness called for the Government, being duly sworn, testified as follows:

BY MR. FIERO:

I was one of the attorneys of the bank in the civil proceeding; had nothing to do with the criminal proceeding. The order in the civil action was obtained early in April, before the first note became due. All the notes were still running when I commenced suit. The action was brought upon the ground of deceit and fraud in passing the bonds. I remember the arrest of Carll and his coming to me with the Sheriff and and the interview that took place on that occasion.

Q. Will you please state what occurred?

> Objected to as immaterial, irrelevant. Overruled. Exception.

WITNESS: If your Honor please, the interview between Mr. Carll and myself was a voluntary one on his part, and occurred under circumstances which make me unwilling to testify to it unless with his consent. He was there in charge of an officer under an order of arrest obtained by me as attorney; he came to me and spoke to me confidentially, and I should be unwilling, unless under compulsion or with his consent, to state the circumstances of the interview and the things that he said.

> MR. PURDY: We object to the evidence, on the ground that it was a confidential communication in a civil action between an attorney and client.
>
> Objection overruled and exception take by the defendant's counsel.

WITNESS: Mr. Carll came in charge of the Sheriff on Monday, the arrest being on Saturday night; the conversation turned almost exclusively upon the relation between Mr. Carll as defendant, and my client, the Bank of the Metropolis, as plaintiff in the civil action for fraud and deceit in passing those bonds. I asked Carll in substance what he had to say for himself, and he said that he had nothing to say; that he wished the bank and myself to deal as leniently with him as we could. I said I had nothing whatever to do with him, in one way or another, with any crime or any proceeding that might be founded on any crime that this might amount to, but only with the action to recover damages in the civil action, and that I would talk with him on that subject, and I wanted to know what he would do. He made some statement in regard to some lumber that he expected would arrive from Florida and out of the proceeds he said he would be able to pay one or more of the notes when they came due, if not before, and was very anxious to have me discharge him from arrest, in order that he might arrange his property, or else reduce the bail to a nominal sum; he said nothing about his knowing of the spurious character of the bonds or of his ownership of them, or in regard to anything except his desire to pay the notes.

CROSS-EXAMINATION BY MR. PURDY:

He appeared to be anxious to be released from arrest, and stated he was willing to do anything he could to make restitution to the bank for any losses. He expressed great regret that the bank might be a loser.

BY MR. FIERO :

He did not say anything about how he got possession of the bonds.

BY A JUROR :

He never mentioned the subject of the spurious character of the bonds, or that they were forged, nor make any explanation as to how the bonds came into his possession.

BY MR. FIERO :

I did not ask from him any explanation on that subject. I did not tell him anything about their being altered or spurious. I did not ask him at that time from whom he got them.

CHARLES F. ALVORD, called for the plaintiff, being duly sworn, testified as follows:

I am secretary of the Manhattan Savings Bank. I have seen the bond 1,294, exhibit 7, now shown me; when I first saw it the number was 9,294, at which time it was the property of the Manhattan Savings Bank of this city, the "1" has been added since.

Q. Did your institution part with that bond, and when and how?

Objected to. Objection overruled, and exception.

A. We never parted with it voluntarily. It was stolen from the vaults of the bank Oct. 29, 1878; the payee in the bond was the Manhattan Savings Institution; it now has the name of Selah C. Carll. The Manhattan Savings Institution has drawn interest on it regularly from Washington.

CROSS-EXAMINATION BY MR. PURDY.

I have been in the banking business over 30 years. This bond is a genuine one. I recollect the original number was 9,294 only from the books, except it is pretty well impressed on my memory now. I was a witness on the first trial of this case. Before being called then I knew from the books of the bank that we held the bond. I first saw the bond in 1866 at the bank. The bond now appears in the name of Selah C. Carll, and I think it has been altered and changed.

The name of the Manhattan Savings Institution was in previously. I am not personally acquainted with the defendant. We have been in the habit of loaning on registered bonds. If we know a man who brings a bond to us with his name inserted, we assume he is the owner. I cannot remember in all my experience of 30 years, that any man ever brought a stolen, forged, or altered bond, amounting to a thousand or $12,000, and borrowed money on it, and allowed it to remain in bank for a period of six months, and continue to negotiate loans on it.

GEORGE DE FORREST LORD, recalled, testifies as follows:

BY MR. FIERO:

The civil order of arrest was never released, but remained in force until judgment was entered. Mr. Carll remained in custody of the Sheriff of the County until the expiration of the three months, at which time by the Code he was entitled to be relieved; a motion was made to that effect which I did not oppose. Judgment was entered against him without any defense being put in. This roll now shown me is the judgment roll.

CROSS-EXAMINED BY MR. PURDY:

My recollection is that Mr. Averill, who was his attorney, made the motion for his discharge on the ground that we had not taken out execution against his person within three months after the entry of judgment. In one sense, Carll allowed judgment to be taken by default in the civil action; he put in an answer, but when the case was called for trial his counsel was there and did not answer, and I think they consented to a money judgment being entered for the amount of money, and this is the judgment roll.

Offered in evidence by defendant's counsel, and marked Exhibit 25.

Hartwell Jenison, witness on behalf of Government, called, being duly sworn, testified as follows:

By Mr. Fiero:

I am chief of the loan division of the Register's office, Treasury Department. I have charge of the issuing of registered bonds; the interest is paid to the payee of the bond by check; we keep a ledger account of registered bonds, which is opened and a credit given to the holder in detail, with the number, date of issue and the amount, and the name of the payee. The bonds are run out as separate series and denominations consecutively. I have certified transcripts from my books covering the entries in regard to the bonds in question.

. The witness here produced copies of the books of the Treasury Department, duly authenticated, which copies were then put in evidence.

Turning to bond No. 14,481 I find it was issued to August Belmont & Co. Feb. 17, 1875, and is a $10,000 bond. While Belmont & Co. were in existence the interest was paid to them. The bond has been returned. The No. 14,481 shows me it is not that bond, because I have the original in my possession—I mean as originally issued to Belmont & Co. No. 14,481 was not issued to Selah C. Carll, as appears by the books. I have the genuine bond in my possession.

By Mr. Fiero: Q. The bond of 29,438, to whom was that issued?

By Mr. Purdy: Q. Do you know anything about it of your own independent recollection?

A. I have an abstract of it from the books of the Treasury Department, which is the only evidence I produce. I know that all the original issues emanated from the office of the Register. I know nothing about to whom the bonds are issued excepting as I see it on the paper. I have no recollection independent of the record.

> Defendant's counsel objects to the line of examination as immaterial and not the best evidence; that they should produce the books, as the witness has testified he has no knowledge independent thereof.
>
> Objection overruled and exception taken by defendant's counsel.

By Mr. Fiero: Do you know to whom the bond 14,481 was issued?

A. August Belmont.

Testifying from the record, the number of the bond, Exhibit 4, has been altered. From the record it appears that the issue was made to the Newark Savings Institution, and contained the name of the payee, under June 5th, 1880, issue. The number of the bond to the Newark Savings Institution was 29,438. That number of bond and the original is in the hands of the Attorney-General, and was issued June 5th, 1880, originally.

By the Court: Q. What did you say about the original?

A. I say I have the original also.

Q. By the record, what is it?

A. 29,438; this is the one (indicating).

Q. I see there are two duplicate numbers of the same bond; I understood him to say there never were.

By Mr. Fiero: How is that?

A. There never are; I have put in my evidence only to the original bond. It appears from the record that there never was any 29,438 issued to Selah C. Carll; the books show the number of the bond issued to the Newark Savings Bank to be 29,438, $10,000 bond; the original issue was the only issue. So far as the record shows, there was no bond 29,438 issued to the Newark Savings Bank, June 24, 1876; there could not be any other issue of the same denomination; the bond issued to that instution was issued June 5th, 1880.

Bond put in evidence and marked Exhibit 28.

By Mr. Fiero: Q. That 29,438, has it been altered as to its number?

A. I say the original bond has never been altered.

Q. I mean this one—Exhibit 4?

A. Selah C. Carll; there is no such number on our books—not in that name.

By the Court: I understand the former witness and this one to say that this particular bond, Exhibit 4, was issued to the Newark Savings Institution, and that the Newark Savings Institution was the name of the payee in that bond, and it now appears to have the name Selah C. Carll.

> Witness: It is not the original certificate, the bond has been surrendered for transfer.
>
> Mr. Purdy: The name of Selah C. Carll appears instead of the Newark Savings Bank, and the number of the bond is identical with the number of the bond reissued to the Newark Savings Bank.

Q. Have you got the record of bond 9438 with you, funded loan of 1881?

A. No, sir. I do not discover any such number.

Q. Exhibit 7, was there any bond 19,294 issued to Selah C. Carll, as appears by the record?

A. No, sir,

The 6 per cent. $10,000 bond of that number was issued to the German Savings Bank, and the name of that bank is inserted as the payee; I have the original issue, 12,294, issued to the German Savings Bank.

Bond put in evidence for Government, marked Exhibit 29.

By Mr. Purdy:

This is a genuine bond.

By Mr. Fiero:

I know nothing about it except as shown by the record. The bond described in the fourth count, 8967, Exhibit 10, the record shows, was issued to Mrs. Abby D. Kinsley under date February, 1878, Newport, Rhode Island. The handwriting across the face is my endorsement. The holes through it are the cancellation that takes place when the bond is surrendered. I do not know whether any No. 8967 as appears by the record in my book was issued to Selah C. Carll. No. 9791, 5th count, Exhibit 12, as appears by the records of the office, was issued to Mrs. Abby D. Kinsley, Newport, R. I. The writing on the bond on the assignment on the back was made under my direction when the bond was sent in for reissue?

Bond Number 19,351, as appears by the records, was issued to Mrs. Abby D. Kinsley, February 2, 1878; it was a 5 per cent bond, of the denomination of $1,000. The writing across the face is in my handwriting; and the cancellation mark was done in the secretary's office. There was no bonds of the numbers mentioned as appears by the records issued to Selah C. Carll at any time.

Bond 22,209, Exhibit 14, was issued August 15, 1878, to W. E. Trainor; it is a 4 per cent. bond, denomination $1,000; no bond of that description, as appears by the records, was issued at any time to Selah C. Carll.

Bond 12,076, Exhibit 17, 8th count of the indictment, was issued, as appears by the record, to Bradford Norman, Dec. 2. It is a 5 per cent. bond of $100. The endorsement on the face is in my handwriting. The bond has been surrendered for redemption, and that is the endorsement on the back to show the fact. No bond of that denomination or description, as appears by the record, was ever issued to Selah C. Carll.

Bond 9,792, Exhibit 18, as appears by the record, was issued to Mrs. Abby D. Kinsley, Newport, R. I., Dec. 7, a 4½ per cent., $1,000 denomination; and the writing, except the name Selah C. Carll, was under my direction. No bond of that description was ever issued, as appears by the record, to Selah C. Carll.

9,850, 9,851, 9,852, as appears by the record, were issued Sept. 10, 1877, to Mrs. Abby D. Kinsley, each 4½ per cent. loan. No bond of these numbers or description, as appears by the record, was ever issued to Carll.

By a Juror:

Carll, as appears by the record of the office, did have a registered bond; it appears in the ledger account in favor of Selah C. Carll; shows that bonds 7,656, $500, of the 5 per cents., were placed to his credit June 12, 1879.

By Mr. Fiero:

I offer that bond in evidence.

By Mr. Purdy:

Q. Is this a genuine bond?
A. It is, sir, a genuine issue.

Objected to as immaterial, and that it is not a forged bond, by defendant's counsel. Objection overruled. Exception by defendant's counsel. Bond marked Exhibit 30.

By Mr. Fiero:

I have the checks for interest payments on that bond and produce them; they are the only ones for Carll's interest payments.

By Mr. Purdy:

This is the interest on the $500 bond.

The amount shows on which particular bond the check was paid. The check is $6.27, issued in the name of Carll. I know it was paid as interest on this particular bond, because, as appears from my record, that bond was the only one to the credit of Carll. I have not got the whole record of the department but have of that transaction. I have not any other record excepting that, and in taking the transcript from the treasurer's book I reasoned that this being the only bond that I could find in his name, the interest was paid on this bond.

Mr. Purdy: We object to this testimony as to the payment of interest and take an exception; there is no evidence to show that the interest was paid on this bond or on other bonds.

Checks marked Exhibits 31 to 35 inclusive. Offered in evidence by Government. Objected to by defendant's counsel; objection overruled; exception.

CROSS-EXAMINATION:

Q. On these three bonds, Exhibits 1, 4 and 7, the name of the payee is changed; what other change is there. Show me what number has been altered and take the first one in your hands?

A. 14,481.

Q. What was that number?

A. I do not know what the original number was.

A change has been made in the number of Exhibit 7, No. 29,438; that is taking the original issue as evidence. I do not know what number is changed there. I presume it is a changed number; it must have been because there is but one origiual issue of that number and that bond I produced in evidence.

That number 19,294 must have been changed, I mean to be understood; but I cannot tell what the original number was. The numbers indicate in numerical order the numbering of the bonds; each loan in each denomination has separate series and numbers commencing with "1" and running consecutively up so that we can have but one number and that number indicates the consecutive number of the bond in the series. A duplicate bond has been issued in the case of one of the 44 per cents. produced in evidence. That is to say: in the case of the 4 per cent., W. E. Trainor, No. 22,259. On that bond there was a duplicate one issued. It is Exhibit 14; it was reissued to the same party and the one in evidence has been cancelled. The others have not been cancelled in duplicate issues; they have been surrendered to the Department, in some cases for reissue and in some cases for redemption, and in that way may be called cancelled.

It is admitted that nobody except the Bank of the Metropolis has lost a dollar on the bonds.

PHILIP BISENGER, a witness on behalf of the Government, being duly sworn, testified as follows:

BY MR. FIERO:

I am the President of the German Savings Bank; I identify bond shown me of which the real number as testified to is 19,294, as the property of the German Savings Bank and in their name as payee. Our bank drew interest on the bond up to that time of its redemption May 5, 1881. It was continued at a less rate of interest by being redeemed and a new issue in its place. The date of the issue was August 7, 1877, and we had it until May 5th, 1881, and drew interest on it. The bond was sent to Washington to be redeemed. I did not send it, but I presume it was by the bank. I have no memory of the transaction outside of looking at the bond and the books. I have been in the bank ever since it was incorporated, and make loans on registered bonds. I did not make loans on this bond; it was bought by the bank. I am the executive officer of the bank. When parties apply for loans I make them on registered bonds. I would not loan twenty, thirty or forty thousand dollars to a man I did not know very well.

GEORGE W. CASILEAR, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

BY MR. FIERO:

I am superintendent of engraving at the Bureau of Engraving and Printing, Treasury Department, and have been some twenty years. I designed for the Government the bonds of the Funded Loan of 1881. These designs are mine. I am perfectly familiar with all Government securities. Alterations or changes are always referred to me, as they come through the several departments, and I have made it a business. Looking at the No. 14,481, Exhibit 1, I state it is a $10,000 registered bond, Funded Loan of 1881, 5 per cent. bond. The name of the payee has been disturbed and erased, apparently with chemicals, and another name substituted in place of the original one—the original name in the bond written originally. The name now is Selah C. Carll, and is not the original name. I cannot make out from the bond the original name. I can see some of the stems of the former name. I can see two of the shanks of caps; one of them crosses the second capital "C," the lower loop of it; and the other stem that I see just touches the lower loop of the first capital "C." That is about all I discover further than that the space is stained by the chemical that has been used in erasing the former name. The number of this bond has been tampered with, and in fact all the figures have been tampered with more or less both chemically and mechanically ; that is by erasing with chemicals. The three first figures have apparently been altered and were apparently something else. By the three first figures I mean the "1" and the two "4's." The present figures are not the ones we used in the Treasury Department ; they vary in not having the sharp print, the fineness of the outlines, and are not in a parallel line with each other. The "44" slopes towards the right, runs upwards from the line ; the ink is different. The figures that we put on the surface printing and the ink is a very thin filling. These figures apparently have been retouched, all of them, so as to approximate in color to the altered figures.

In bond 29,438, Exhibit 4, now shown me, the figures "29,438" on the green panel have also been disturbed by chemicals and mechanical means. I think the "294" are the figures that have been disturbed ; although the "3" looks as if it had been disturbed. There is a difference in the colors of the inks. The figures have been tampered with ; they have first been erased with chemicals and altered and retouched afterwards, so as to approximate in color to the first bond which I examined. There is no particular difference in the size of the figures. The original payee in this bond has been erased by chemicals and the name of Selah C. Carll substituted. I can readily see the stains of the ink that constitute the former payee, but cannot make out anything. I notice in the name of Selah C. Carll that the body strokes have been retouched in many places by a pen after it has been written in. The fibre of the paper has been disturbed in taking out the original name of the payee.

In bond 19,294, Exhibit 7, now shown me, the figures 9,294 are apparently the original figures, and the figure "1" has either been added or substituted for another figure that has formerly been there ; but apparently the original bond as issued was No. 9,294. Respecting the form of the figures or the ink employed, and in the putting on of the figures they have disturbed the surface of the paper ; and the figures are also blurred. Our figures are sharp. The payee's name, Selah C. Carll, is not the original name that was formerly in the bond. I judge this to be a fact because of the stains of ink in the space occupied by the name ; and also from the fact that the name Selah

C. Carll after having been written in appears to have been retouched by a pen in the shank of the letters. The name of the payee on the bond occupied the more length than the space occupied by the original payee. I think I can see "New York" here. I can see "York" and I think "New" on the right hand end of the bond. Otherwise it is an original bond. It is not one of my designs; it was gotten up by the National Bank Note Co. now the American Bank Note Co.

In bond 8,967, Exhibit 10, shown me, there has been no change in the number, as the panel is not disturbed in any way; but the former name of the payee has been extracted by chemicals and Selah C. Carll inserted apparently on the original name. I judge so because Selah C. Carll appears to have been retouched after it has been written in. I can see the stain the former ink occupied in the space between the two capital "C's" and can see the shanks of one of the capital letters, but cannot make out the letters of the name of the former payee.

Bond 9,791, Exhibit 12, shown me, is a $1,000 bond, and the panels which bear the numbers have not been tampered with in any respect whatever; but the original payee of the bond was Mrs. Abby D. Kinsley; I can make that out; and at the right hand of the bond I can also make out a letter "P"—capital P, apparently.

The number of the bond 19,351, Exhibit 13, has not been tampered with, but another name has been substituted as payee; I can see the stains but cannot see distinctly any of the former letters; only the shanks of the old letters in several places.

Bond 22,259, Exhibit 14, the original payee's name has been extracted by chemicals, and I can make out the letters Mrs. and "met" or "mef;" nothing else distinctly.

The bond 12,076, Exhibit 17, the original name of the payee has also been taken out; I can see the stains of the old ink; I can make out some of the former letters, but not distinctly.

Bond 9,792, Exhibit 18, this is an altered bond; the original name of the payee has been taken out and another substituted; I can make out it is "Abby" and a capital "M."

9,850, Exhibit 19, the original name of the payee has been taken out of the bond; the fibre of the paper has been materially disturbed; I can make out the capital name and the shank of a "y"—probably "Abby."

Bond 9851, Exhibit 20, the same remarks will apply to this bond in relation to disturbing the fibre of the paper and the altering of the name. I can see there "Abby," and I think a capital "D," with a glass.

9851, Exhibit 21, the original name of the payee has been erased by chemicals and the name "Mrs. Abby" something, and at the end "Newport," probably. The stains of the ink are still there.

I have been in the Treasury Department twenty years. It is easy, when government bonds are stolen, for the parties in whose name they are registered to have the numbers advertised at the various banks.

When I say these bonds have been altered, I judge, from the stains of the ink that have been left of the former name, whatever chemicals have been used might destroy the vegetable matter of the ink and leave some carbon behind it. I do not undertake to say what the original payee's names were in these bonds; I could not say that. There are none of them where I can make out the complete name. I judge the names taken out are the original payee's, because chemicals have been used and the new names laid in with stains, with the disturbance of the fibre and discoloration in the place the name occupied; this is the only way I can tell. All the bonds I have examined are genuine. In the examination of these bonds I am an acknowledged expert. I do so as an acknowledged department expert.

JOHN S. CARRICK, a witness on behalf of the Government, being duly sworn, testified as follows:

BY MR. FIERO:

I assisted Masterson in the spring of 1880 in watching 14 West Forty-eighth street for Mr. Carll. It was the last of March or commencement of April. We watched for three or four days from morning till night and one full night. I saw him the first day when he entered the house. I saw nothing of him afterwards. I did not see him come out. I was not present when he was arrested? I followed him up to his house and down town and never saw him leave. I followed him from Cortlandt street and he did not leave after that to my knowledge.

CROSS-EXAMINATION:

I acted at that time in the capacity of detective. I had no warrant for him when I followed him. I knew that a warrant was out. I have been a detective for three years. I did not go to the house and make inquiries for him during the entire four days watching.

CHARLES H. PATTERSON, a witness on behalf of plaintiff, being duly sworn, testified as follows:

I was formerly assistant treasurer in the City of New York. The powers of attorney, exhibits 5, 8, and 15, now shown me were made before me by the defendant. I remember one occasion when I witnessed Mr. Carll's signature from the fact that it was in another room than my room in the Treasury Department. As I was passing out pretty late I stepped into the interest room, and Mr. Cady, who was there, asked me to witness the signature of Mr. Carll. These, I presume, are the ones I witnessed at that time. I do not think I could detail the conversation that took place. I had not known him before. He was identified by Mr. Cady, our interest clerk, and on the strength of his recommendation I put down my signature.

GOVERNMENT RESTS.

Defendant's counsel then moved that the Court directs an acquittal on the ground that the act charged against the defeudant, assuming them to be true, are not an offense within the jurisdiction of the United States Courts.

Motion denied, and exception by defendant's counsel.

The defendant, SELAH C. CARLL, being called on his own behalf and duly sworn, testified as follows:

BY MR. PURDY:

I am 50 years of age. I have heard the testimony in the case. I borrowed some money of the Bank of the Metropolis. I suppose these are the securities.

I have been in the carpet business in Brooklyn, and other businesses. In April, 1879, I was in the lumber business in Bainbridge, Georgia, in partnership with Walter J. Hodman.

We had a large tract of yellow pine. I was also engaged in a boiler concern in this city. I had also a contract with the Brooklyn Bridge which came a little later on; but at this time I had a contract with the Navy Department for yellow pine lumber to come from Georgia. I do not recollect how much we supplied—perhaps about 16,000 cubic feet. The Brooklyn Bridge yellow pine contract was made in the fall or winter of 1879. We had owned the plantation in Georgia about two years. While engaged in the pine business we found a good deal of difficulty in Georgia negotiating drafts, etc. There was no banking facilities anywhere around for a hundred miles; and it occurred to us that it might be a good place for a bank. Of course I did not have the money to do it. My wife's step-father, Mr. Stewart, did have some money or some securities and we talked about it a good deal. We wanted to raise a capital of $100,000. After looking around considerably I was finally introduced to a man by my brother, by the name of Boughton, who was represented to have a good deal of money. We talked about the matter a great deal. He came to the house a number of times and finally said he could raise it. Mr. Stewart did not have his ready money, but he had it in securities, some railroad stocks and insurance stocks, which he gave to Boughton to transfer into the government bonds; it had to be on government bonds that the banking business was done.

Q. How did your name come to be put in?

A. Mr. Boughton supplied those bonds; they really belonged to Mr. Stewart, but he wanted me to manage the thing for him—he was quite old. Mr. Boughton sold these securities, and bought United States bonds in my name, and delivered them to him. I was to manage the affair, and they were put into my name for that purpose, but Mr. Stewart's money bought them. Mr. J. H. Stewart, a gentleman who was interested in the affair with me, had these particular bonds. They were bought from time to time, as other things could be converted. I mean to say that the money came from Mr Stewart, who gave to Mr. Boughton; that Mr. Boughton bought certain government bonds with the money, which bonds were put in my name. The bonds, when bought, were given to Mr. Stewart, and he handed them to me. Mr. Boughton used to be a broker. Mr. Stewart was with me in all my matters, backing me up. I used his money. I saw Boughton very frequently, at my house, and also at Mr. Chatfield's office, prior to negotiating the bonds. I borrowed on the bonds, because I wanted to use the money in another concern. At this time the banking operation had been suspended for the time being, because Mr. Boughton did not furnish his portion of the money. It ran along during the spring of 1879, and then I wanted to use the money in some other operation, and I got the bonds for that purpose from Mr. Stewart, and he knew all about it. I recollect the first bond negotiated with the bank. I got it from Mr. Stewart a few days before I went to negotiate it. It may have been a week. I got only one bond at that time. I went to the Bank of the Metropolis, the officers of which I knew. I had kept no regular account. I had been there a good deal though. I was often there. I went in, and asked to borrow on the bond, took it out of my pocket, offered it to Mr. Schell, and asked him to make a loan. He discounted the note for me. I think the loan was $5,000; I did not use it all. I used some money that day, but did not draw the whole $5,000. I cannot tell how much. The next loan, I think, was in the fall. I think the first one was in April, and I had it renewed when the note came due--a three months' note I gave for it. I made a new one. I deposited the money I got in other places. In fact, I was depositing all the time and drawing. The note was renewed and the next one, I think, was in September. I think the next was in December. The money I got from the bank I invested. I was sending a good deal of money South, about nine or ten thousand dollars, perhaps.

I had about $15,000 down in the boiler concern; it was the Bond & Bradford Boiler Mfg. Co.; I went into it in the fall of 1879. Mr. Stewart was also interested; that is the reason he allowed me to use the bonds in business. The works were in Wilmington, Delaware, and the office was 34 Cortlandt street. Mr. Bradford was President. Mr. Clapp and Mr. Pond were the principal owners; it was a stock concern; I owned $15,000 of it. After my troubles it was broken up. I held $30,000 of the stock when I was arrested. Some seven or eight thousand dollars was invested in mining operations in Colorado. I also had some money in the house where I was living, that is, in the purchase of the house. It was in my wife's name. She was Mr. Stewart's daughter. There was $6,000 paid in all on it.

I never owned registered bonds before. The reason I did not draw interest on the bonds when they were deposited in the bank was, I knew nothing about it. I suppose there was some arrangement made about it. I thought that the bonds being hypothecated with the bank, they would draw the interest. That it would be stopped or paid to the bank; in fact, I did not make any inquiry about it at all.

I recollect Mr. Schell speaking something about the assignment. Sometime in the latter part of March Mr. Schell or Mr. Rogers wrote me a note wanting to see me—something about changing the power of attorney in the bond. He wanted me to come to the bank. I went. Saw Mr. Schell. He took the bonds out of the safe, opened them, and said there was some question about this power of attorney in case of my death. There would be some difficulty in collecting the money on the bonds. He asked me if I was willing to change it to another form, and I said, most certainly.

I have heard the evidence of the detectives in which one of them said he followed me home, and that I went into the house and did not come out, and that they were searching around for me three or four days. I was about my usual business; did not conceal myself in the slightest; knew of no one being after me with a warrant; had no intimation of the kind. Was arrested in a hotel, in a very public place. Was down to my place of business, 34 Cortlandt street, every day. I was in Brooklyn a good deal at this time, with regard to the bridge, backwards and forwards.

With regard to Mr. Lord's testimony, I do not know as I used any expression such as " Be easy with me." I did tell him that if I could have my liberty instead of being locked up I could manage every one of the notes as they became due. I regarded myself as responsible whether they were forged or not. And as I had borrowed money on them, of course, I would endeavor to save the bank from any loss. I requested the Sheriff to take me to Mr. Lord's house ; did not find him in; was then taken to another one by the name of Lord, but he could do nothing. In consequence I had to remain in the officer's custody from Saturday until Monday, and thought the thing would be arranged without any difficulty whatever, and requested to be taken to a hotel. I did not see Mr. Lord until Tuesday or later, but did not employ counsel in the meantime, as I did not think it would be necessary if I should see Mr. Lord.

I never told McGonigal, the Sheriff, that when I was coming down town I met a man on Fifth avenue who said to me: "Good morning," and that I told him I was hard up, and he referred me to Chatham street where I could make some money; and there was no such statement made. I did not say to McGonigal that I got the bonds from Boughton. I might have mentioned his name and that I was interested with him in some operation South. We did not talk over the matter very much; no one was present at the time.

I recollect the $500 bond now shown me. I bought it of Vermilye & Co. sometime in the summer of 1879, to make a birth-day present to my oldest son George Carll. He is with Mr. Berry, a broker down in Exchange place. I told Mr. Vermilye I wanted to buy a registered bond. He said "Very well; what series?" I said "I don't know—6 per cent." And they said "Why buy 6 per cent., because they would be called in very soon; you had better buy 5 per cent." So I said "All right." They figured it up and I paid the money. About a week afterwards I called there and got the bond. I gave it to the boy; he kept it for a while; it was in my name; he could not use it; I gave him a check for the bond afterwards. The interest was sent to my house, about $6 and something, every quarter. The check was on the bank of the Metropolis, payable to my son's order. The fact that interest was sent to my house on this $500 bond did not suggest to me that the interest on the bonds in the Bank of the Metropolis should also be sent to me. It did not occur to me, because I supposed the interest would be sent to the bank, they holding the bond.

CROSS-EXAMINATION:

I don't know when I got the bond 19,294, Exhibit 7. It might have been more than a week before I hypothecated it. It might have been a month; I might have not wanted to use it. I cannot fix any date when I got it. It appears to have been registered in my name May 24th, 1866. I did not receive it then; it must have been at least ten years after that that I received it. I did not draw interest for those ten years or so.

The $10,000 bond, 14,481, Exhibit 1, came into my individual possession about a week or ten days before it was used. It appears to be registered in my name on the books of the treasury, August 6th, 1876, but I never examined it. I never got any interest from 1876 for two or three years before I got possession of it. Mr. Stewart got in 1879 from the other man, probably a little while before it was hypothecated.

Bond 29,438 I cannot tell when I got possession of it. I never examined it. I did not get it at the time it appears to have been registered in my name—June, 1876—and no interest was paid me between that time and 1879.

These bonds were not given to me by Mr. Stewart at once. Mr. Stewart is now dead; he died at my house about six weeks ago.

I do not know when bond 8,967 was received by me from Mr. Stewart, nor when the loan was made on it. It was received a short time before the loan. I took no memoranda of the bonds as they were given me, only as the notes called for them in the bank. I never undertook to sell the bonds in Wall street to raise money on them. When I received the bonds from Mr. Stewart they were in their present condition: he gave them to me in that condition. He received them during the winter—the last one late in the winter or early spring. I do not know when he received the bonds; I cannot state definitely.

Mr. Stewart was pretty well off; he owned considerable property in New York and Sullivan County; he had a large claim on a large estate for which he was receiving money. He talked some to me about the bonds—not very much. He turned them over to me personally. I could not say when he gave me any of the bonds; it is now three years ago. I cannot state when Mr. Stewart purchased the bonds.

I first conceived the idea of starting the bank along in the latter part of 1878 or 1879. We were getting ready to start it in 1879 or 1880; in the fall of 1878 the idea was conceived. The bonds were purchased after the idea was conceived. At first, of course, it was only in embryo; it was not started at all; it was simply a prospect. The bonds were not purchased as early as that. They were furnished by Boughton during the winter; the latter part of the winter of 1878 and the first part of 1879, I should think, as we went along; they were not all bought at one time. I mean by the term as " we went along," as we got other things ready. I cannot tell how many different times we got bonds from Boughton. We received only $47,000, all told, in bonds from Boughton. We did not get enough to establish our bank. I presume there was no dificulty in getting registered bonds from the Government to establish the bank. The market value, however, was fluctuating. We could buy them from the Government, or anybody else, at their market value. I cannot fix any date at all when I received any of the bonds. The last bond (5,967) was purchased while we were agitating the establishment of a national bank; they all were, so far as that is concerned. We stopped agitating the establishment of the bank when we found the other parties did not come up to their contract; but we had not entirely abandoned it. It ran along through the spring; when the project fell we wanted to use the money for other purposes. During the time I was negotiating the bonds. Mr. Stewart was one of my attorneys in the former trial; he has since died; he died on September 11; he did not state in court that he gave me the bonds.

RE-CROSS EXAMINATION BY MR. PURDY:

I did not take the witness-stand at the former trial. I did not call Mr. Stewart, because he objected to it on personal grounds of his own. The reason I did not go on was because Mr. Storrs, who defended me at the time, advised me, with Mr. Stewart, not to go on, because I would have to tell this story; and on Mr. Stewart's account I declined to do it. This was the only ground why he did not go on the stand.

I have a wife and six children—four girls and two boys. The oldest is 25; the rest are grown up. I was never in possession of the bonds altogether in my life. I never saw any memorandum of the sale of the securities that Mr. Stewart sold in order to purchase the U. S. bonds. In none of the consultations that I had with him did I see this memorandum. It never occurred to me that the Treasury Department knew nothing of the transfer of the bonds to the Bank of the Metropolis. I did not know anything about it at all. I supposed the Bank of the Metropolis had full control of it if I signed the power of attorney. I supposed the bank notified the treasurer that they were holding them.

Mr. Boughton did not put in any capital in the business—that was the trouble. I was not present at the time he delivered these bonds to Mr. Stewart after the purchase, nor when he gave any account of the bonds he purchased. I was present at the time of the interviews when the question of the purchase of the bonds was entertained; it was talked over a number of times at the house; then the suggestion was made simply to buy the bonds and where they could be bought at the best advantage. Mr. Stewart never had any conversation with reference to the bonds, after they were bought, with regard to their purchase, except in a general way. Mr. Stewart told me they were bought in my name; he wanted me to manage the affairs entirely and turned the bonds over to me. The company in which a portion of the money went was the "Glide."

Articles of agreement were drawn up between myself and Boughton and Stewart in the fall or winter of 1878, I think, or 1879. The agreement was given to Mr. Stewart and a copy to Boughton. The original is in Mr. Stewart's papers somewhere. The papers are scattered all over; there are some up to my house and some at his son-in-law's; some in the Safe Deposit Company —in fact, everywhere; they have not got them straightened since his death, His son-in-law is a gentleman by the name of Ader, who keeps a jewelry store in Court street, Brooklyn. I cannot give the purport of that agreement. It was drawn in Mr. Chatfields's office—an agreement for the purpose of establishing a national bank—and we signed it.

The jury were then charged by the Court, and thereafter rendered a verdict of guilty of the several offenses in the indictment set forth.

Thereupon the defendant duly filed the following notice:

CIRCUIT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA
vs.
SELAH C. CARLL.

TO JOSEPH M. DEUEL, Clerk United States Circuit Court.

SIR: Please take notice that at the next Criminal Term of this Court, I shall move upon the record and the exceptions taken at the trial for an arrest of judgment and for a new trial in the case of the above-named defendant Selah C. Carll, who was convicted at a Criminal Court of the United States for the Southern District of New York, on the 23d day of October, 1882, for passing altered United States registered bonds, the information being framed under section 5431 of the Revised Statutes of the United States.

Dated New York, October 24, 1882.

Yours, &c.
AMBROSE H. PURDY,
Attorney for Defendant.
Office and P. O. Address,
115 Nassau St.,
New York.

The motion in arrest of judgment and for a new trial was denied by the Court in Bank on 22d December, 1882. No opinion being filed.

Exhibit No. 2.

At a Stated Term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the United States Court Rooms, in the City of New York, on, Tuesday the 26th day of December, in the year of our Lord one thousand eight hundred and eighty-two.

Present—The Honorable CHARLES L. BENEDICT, Judge.

THE UNITED STATES
vs.
SELAH C. CARLL.

On motion of the United States Attorney, ordered sentence.

The Court thereupon proceeds to pass judgment, and the prisoner, Selah C. Carll, is sentenced on the first count of the indictment to be imprisoned at hard labor for the period of fifteen (15) years, and to pay a fine of one dollar ($\$1\frac{00}{100}$).

Sentence to be executed in the Erie County Penitentiary.

Sentence in the other courts suspended.

A true copy from the minutes.

JOSEPH M. DEUEL,
Clerk.

J. W. S.

16-52

OFFICE SUPREME COURT
FILED
JAN 3 1883

Supreme Court of the United States.

No. 7. ORIGINAL. OCTOBER TERM, 1882.

EX PARTE: APPLICATION

OF

SELAH C. CARLL,

Petitioner.

Brief in support of Petition for Writs of Habeas Corpus and Certiorari.

A. J. DITTENHOEFER,
Petitioner's Counsel,
291 BROADWAY,
New York City.

BURGOYNE, Printer, 57, 59 & 61 Park St. (Law Telephone 587), N. Y.

SUPREME COURT OF THE UNITED STATES.

No. 7 Original. October Term, 1882.

Ex Parte Application
of
Selah C. Carll,
Petitioner.

Brief of Counsel for Petitioner on Application for Writs of Habeas Corpus and Certiorari.

STATEMENT.

This case comes before the Court upon an Application for Writs of Habeas Corpus and Certiorari.

The petitioner, Carll, was indicted in March, 1881, in the Circuit Court, for the Southern District of New York, charged with having violated section 5431 of the Revised Statutes of the United States in having passed, uttered and published to and upon the Bank of the Metropolis of the City of New York, with intent to defraud the said bank, certain "bonds of the United States," described in the indictment, and therein alleged to be falsely made, forged, counterfeited and altered.

The section reads as follows: "Every person who, with intent "to defraud, passes, utters, publishes, or sells, or attempts to "pass, utter, publish, or sell, or brings into the United States "with intent to pass, publish, utter, or sell, or keep in possession "or conceals with like intent any falsely made, forged, counter-"feited or altered obligation or other security of the United "States, shall be punished, &c."

In October, 1881, the petitioner pleaded not guilty, was tried and convicted, but before sentence a motion was made before three judges sitting in banc for an arrest of judgment and new trial, which Court divided and certified to this Court certain questions involving the sufficiency of the indictment, which were answered in favor of the petitioner, because of the failure to allege in the indictment that the petitioner knew, at the time of passing the alleged instruments, that the same were falsely made, forged and counterfeited.

Thereafter, and in June, 1882, the petitioner was again indicted and charged with the identical offenses with which he was charged in the first indictment, to which a plea in abatement or as interposed, setting forth the prior conviction, which plea, was without any trial of the issues presented by it, overruled, and in October of that year, after a plea of not guilty, the petitioner was tried and found guilty.

A motion was made, in accordance with the rules and practice of the Circuit Court, for an arrest of judgment and new trial, which was denied by the Court in Banc, consisting of Judges Wallace, Benedict and Brown; but no opinion was filed. Thereafter, in December, 1882, the petitioner was sentenced upon the first count of the indictment (there being twelve in all, sentence being suspended on the remaining eleven) for the term of *fifteen years* at hard labor in the Erie County penitentiary, and is now in the custody of the Marshal of the United States for the Southern District of New York.

The petitioner was a merchant, doing business in the City of New York. Coming into possession of certain genuine registered bonds, which were non-negotiable by delivery, and transferable only on the books of the Treasury Department of the United States, he presented the same to the Bank of Metropolis, of the City of New York, *as collateral security* for his own notes, which were discounted for him by the said bank. The monies realized upon the discount were left on deposit in the said bank to the credit of Carll, and were thereafter, in the regular course of business, checked out by him.

Subsequently it appeared that the name of the original or true payee had been erased before the bonds were left as security, and the name of Carll inserted instead thereof, by some one, but it was not charged or pretended that Carll was guilty of that offence, but merely that he knew at the time of passing the bonds that they had been altered in that respect.

The petitioner now applies for writs of *habeas corpus* and *certoirari* to bring the record before this court on the ground that the petitioner is restrained of his liberty by an unauthorized action of the said United States Circuit Court, which it is claimed had no jurisdiction of the offences charged in the indictment or of the acts proven upon the trial.

Point I.

If the petitioner is restrained of his liberty by an unauthorized action of the United States Circuit Court, which, it is claimed, had no jurisdiction of the offenses charged in the indictment against the petitioner, or of the acts for the commission of which he was found guilty, this Court has the power, and will issue a writ of *habeas corpus*, and, in connection therewith, a writ of *certiorari*, to bring up the record of the inferior tribunal for examination, and will discharge the petitioner.

Ex Parte Lang, 18 Wall, 163.
Ex Parte Jackson, 96 U. S., 727.
Ex Parte Virginia, 10 Otto, 343.
Ex Parte Siebold, 10 Otto, 371.
Ex Parte Rowland, 14 Otto, 604.

Point II.

No crime is charged against the petitioner of which the Court below had jurisdiction, for the reason that the instrument described in the indictment and charged to have been falsely made, forged and counterfeited, and called therein "bonds of the United States," show upon their face that they are not bonds or obligations of the United States, and even if genuine, possessed no validity.

The instrument described in the first count purports to be signed "John Allison, Register of the Treasury;" but it was not alleged in the indictment or proven upon the trial that any authority was vested in the Register of the Treasury to sign or issue it.

The instruments described in the other counts purport to be similarly signed, but by different registers.

All the instruments excepting the one set forth in the third count of the indictment were issued, as appears on their face, under the Act or Congress, of July 14th, 1870, as amended by the Act of January 20th, 1871, the first section of the Act of 1870, 16 U. S. Statutes at large 272, provides: "That the *Secretary of the Treasury* is hereby authorized "To issue, in a sum " not to exceed in the aggregate two hundred million dollars of " coupon or registered bonds of the United States, in such form " as he may prescribe, of denominations of fifty dollars or of " some multiple of that sum, redeemable," &c.

No other provision of that act relates to the authority for the issue of the bonds, and the amended act (16 U. S. statutes at large P. 399) only gives the secretary of the treasury the option to make the interest payable quarterly instead of semi-annually, as the act originally prescribed.

Clearly these acts give the *Register of the Treasury* no authority to issue or sign the instruments described in the counts other than the third, nor did he obtain any such authority from the act creating his office and prescribing his duties and powers (§ 312-315 U. S. revised statutes, Elmes, N. Y., executive department, § 670-678). Any bond issued by any one else than the *Secretary of the Treasury* is a mere nullity.

To issue, means of execute and deliver, to send out and put into circulation (Webster's Dict.), and the only officer empowered to perform that act is the Secretary of the Treasury,

And in this connection the significant difference between the Act of 1870 and the previous acts relating to the issue of United States bonds becomes important and should be controlling. In all of the previous acts, like the act of 1870, the Secretary of the Treasury was directed to issue the bonds; but, unlike the act of 1870, the previous acts uniformly designated, when it was so intended, that some other officer should sign the bond, either solely or in connection with the Secretary of the Treasury.

The act of June 22d, 1860, for the redemption of Treasury notes, authorizes the President to borrow $21,000,000, and the stock to be issued *is directed to be signed by the Register of the Treasury.*

U. S. Loan, Currency and Coinage Acts, p. 26.

The act of December 17, 1860, directs the President *to cause to be issued*, prepared and signed $10,000,000. Notes, *to be issued by the Secretary of the Treasury and countersigned by the Register of the Treasury.*

U. S. Loan, Currency and Coinage Acts, p. 27.

It will be noticed that as this act does not require the President to sign the bonds or note, it directs that he shall *cause to be issued.* If he were to have signed, the language would have been as in the act of 1870, *that he shall issue.*

The Act of February 8th, 1861, directs the Secretary of the Treasury *to cause* to be prepared certificates of stock *to be signed by the Register of the Treasury*, and sealed with the seal of the Treasury Department.

U. S. Loan, Currency and Coinage acts, p. 32.

The act of March 2d, 1861, to provide for the payment of outstanding loan, the certificates are to be signed by Register of Treasurer, and sealed with the seal of the Treasury Department.

U. S. Loan, &c., Acts, p. 34.

The act of July 17th, 1861, to authorize national loan, authorizes Secretary of Treasury to borrow $250,000,000, and to issue coupon or registered bonds, in such form as he may deem advisable. They are to be signed by 1st or 2d Comptroller or the Register of the Treasury, and countersigned by such other officer as the Secretary of the Treasury may designate.

U. S. Loan, &c., pp. 38–39.

The Act of March 1st, 1862, directs the certificate of indebtedness to be signed by the Treasurer *and countersigued as directed by Secretary of Treasury.*

U. S. Loan, &c., Acts, p. 48.

It will be seen that wherever an act contemplates a signature by an officer than may be designated by the Secretary of the

Treasury, it expressly so provides, so that any one can see by a mere reference to the law whether a particular bond is authorized or not.

The Act of February 25th, 1862, to authorize the issue of notes and for the redemption thereof, provided in Section 3: "That the United States notes and coupons or registered bonds *shall be issued in such form as the Secretary of the Treasury may direct*, and shall bear the written or engraved signatures of the Treasurer of the United States and Register of the Treasury, and also the imprint of the seal, &c., *or signed by the Treasurer or for the Treasurer by such persons as may be specially appointed by the Secretary of the Treasury for that purpose*, and countersigned by the Register of the Treasury, or for the Register of the Treasury, by such persons as the Secretary of the Treasury may specially appoint for that purpose.

U. S. Loan, Currency and Coinage Acts, p. 44.

It will be further noticed that the Act of 1870, under which the bonds in the indictment were issued, after directing that the Secretary of the Treasury shall issue them, gives him power solely to prescribe the form of the bonds and does not authorize him to delegate to any one else his duty to issue and sign them, unlike the act of February 25th, 1862, which, besides authorizing the Secretary to prescribe the form, expressly gives him power to delegate to a subordinate the duty of signing them. It is evident, therefore, that inasmuch as Congress omitted, in the act of 1870, any power of delegation in the Secretary of the Treasury, such as is found in the act of 1862, it was intended that the Secretary, in respect to the bonds in question, should not be permitted to delegate such power, but should sign the bonds himself.

The force of this argument becomes quite significant when considered in connection with the fact that the Grand Jury omitted to charge in the indictment that the bonds were "issued, or *purported to have been issued under any Act of Congress*." This is the ordinary, *and in fact an essential*, allegation in indictments for forgery or for passing forged notes or bonds, under Section 5,413 of the Revised Statutes, but was omitted, probably intentionally, from the indictment in the case at bar, because the bonds *did not purport*—signed and issued as they were—to have been issued under the authority of an Act of Congress.

All of the above reasoning applies with equal force to the instrument described in the third count of the indictment. That instrument was issued, as appears on its face, under and in pursuance to an Act of Congress approved July 17th and August 5th, 1867, which authorizes the Secretary of the Treasury to borrow $250,000,000, and to issue coupon or registered bonds, in such form as he may deem advisable, but *expressly* directs that they be signed by the first or second Comptroller or the Register of the Treasury, and countersigned by such other officer as the Secretary of the Treasury may designate; whereas it appears on the face of the instrument mentioned in that count that it was signed by one "J. A. Graham," styling himself "*Acting* Register of the U. S. Treasury," *and countersigned by no one.*

Now it is clear that unless some law authorizes the person acting as or for the register to sign these bonds, required expressly to be signed by the register, they are without validity. In certain cases Congress did recognize the necessity of authorizing the acting register to sign; and by section 315 of the revised statutes declared that the assistant or acting register might sign the interuments mentioned in said section. But bonds are not mentioned therein, and by implication. are necessarily excluded from the operation of the act.

Again this bond is void, even if included in that provision for *it appears upon its face not to be countersigned as the act requires.*

Point III.

The instruments mentioned in the different counts do not come under the protection of the United States laws, for the reason that they appear upon their face to be, if anything, the individual obligations or bonds of the persons who purport to have signed the same.

The instruments are signed by "John Allison," "J. A. Graham," "W. P. Titcomb" and "G. W. Scofield." It is true they recite that the United States of America will pay at a certain time, to the payees named in the instruments, a certain sum of money, but it is not alleged in the indictment nor does it appear upon the face of the instruments, that the respective persons who signed the same had any authority to bind the United States by the promises contained therein. And as far as appears from the bonds or the indictment or the acts of Congress under which the instruments purport to have been issued, the signing by these persons were wholly unauthorized and uncalled for acts, on their part, and if any liability was created it was the individual liability of those persons. The addition to their names "Register U. S. Treasury," or "Acting Register U. S. Treasury," does not, in itself, indicate or imply the existence of any such relation between these persons and the government, which gives any greater character to the bonds than if the descriptions of these individuals had not been added to their names.

There is no Treasury regulation that we are aware of which authorizes the Secretary of the Treasury to delegate to the Register the functions of his office or powers exclusively vesied in him; but if any such regulation is in existence, then that fact should have been alleged in the indictment.

And while we think we have conclusively established that the Secretary of Treasury, being directed to issue the bonds, must sign them himself; yet, if it could be claimed that he can through the Register issue the bonds, that act of signing should, at all events, be the *Secretary's act, through* the Register, and not the act of the Register; in other words, the name on the bond must be the Secretary's and not the Register's name.

In State against Wheeler, 1 Green's Crim. Law Reports, 541 ; 19 Minn., 98, the indictment was for forgery, under a law which reads as follows : "Whoever falsely forges or counterfeits any "accountable receipt for money, goods or other property, with "intent to injure or defraud any person, shall be punished, &c." The indictment chrrged the forging end passing of an accountable receipt for personal property, to wit, an elevator check for wheat of the St. Paul and Sioux City Elevator Company, signed "M. Good, Inspector,"

On motion in arrest of judgment, the Court say: "As an "instrument to be the subject of an indictment for forgery "must appear *on its face* to be or to be in fact one which, if

" true, would possess some legal validity, so, *if it do not so appear on the face of the instrument set out in the indictment, facts* " *must be averred* which will enable the Court to see that, if it " were genuine it would possess some validity. Tried by this " rule this indictment is insufficient. The instrument set out " purports to be a statement by Mr. Good, inspector, that the " St. Paul & Sioux City Elevator Company had received at St. " Paul 84 bushels of wheat on account of W. B. N. or bearer. " It is said by defendant in error that the legal effect of this " kind of instrument is to entitle the innocent holder " for value to that number of bushels on presentation " to the company. Suppose that it is, how does that " appear on the *face* of this instrument? In point of fact " it does not purport to be signed on behalf of the company. " The addition of 'inspector' after the name of the subscriber " does not indicate in itself the existence of any relation whatever between himself and the company, much less of any " such relation as would in itself import any authority on his " part to act for it.

" The company would not be bound by such an instrument, " signed by a mere stranger; therefore, if no connection " between the company and the subscriber of the instrument appear on its face, such connection must be " averred. " It cannot be contended in support of the " indictment that Mr. Good, 'inspector,' was an agent " of the company. The paper must purport on its face " to be good and valid for the purpose for which it was created." " This does not; no connection appearing between the company " and the signer of the instrument."

So in the case at bar, the instrument does not purport to be signed by the Secretary of the Treasury, the only officer authorized by the statute to issue it. Nor does, applying the language of the Wheeler case, the addition of the words "Register of the Treasury" after the name "John Allison, indicate in itself the " existence of any relation between himself and the Secretary " of the Treasury, much less of any such relation as would, in " itself, import any authority on his part to act for him."

In the United States against Schoyer, 2 Blatch., C. C., 59, a case in this very district, the indictment was for altering an instrument "issued by the Collector of the Port of New York, 'by virtue of his office,'" which under the law could only have been issued by an inspector of revenue, but by another Act of Congress the duties of such inspector could be imposed on any other officer. The indictment was held bad on demurrer, for the reason that it did not show any authority in the Collector signing the instrument to issue the same. If it was because the duties of that office were devolved on the Collector under the act of Congress, that fact should have been alleged; and even in that view, the Court held, it could not be said, as charged in the indictment, that the instrument was issued "by the Collector by virtue of his office," but by virtue of the duties of Inspector of Revenue devolved on him by law.

Following this view, if the duties of the Secretary of the Treasury in issuing said bonds devolved on the Register by an act of Congress or authorized treasury regulation, that fact should have been alleged, and even then he could not issue that instrument as "Register of the Treasury," but by virtue of the duties of the Secretary of the Treasury devolving on him by law.

And the precedents in the books conform to the principles contended for.

Wharton's Precedents on Indict., forms 305–311.

In the consideration of this proposition, the principle by which the United States would be liable on such bond to the holder thereof should not be confounded with the rule which must prevail in a criminal prosecution for the forgery of such instrument.

On an action for the recovery of the amount of said bond. the act of the Register, with full knowledge on the part of the secretary, might operate as an estoppel, and, as in the Wheeler case, the legal effect of the bond may be to entitle the innocent holder to the amount thereof; but again using the language of that Court, we say, "suppose that is so, how does that appear on the face of this "instrument?" *Non constat* the act of the register was wholly unauthorized by the Secretary of the Treasury. And the doctrine of estoppel is unknown to the criminal law.

Point IV.

Assuming that the instruments are "bonds of the United States." the conviction and sentence of the petitioner are illegal and void, for the reason that the Court below had no jurisdiction of the offence of which he was convicted.

It was conceded on the trial (40) that the instruments set forth in the indictment were genuine registered bonds, non-negotiable by delivery and transferable only on the books of the Treasury Department of the United States, and that the only forgery of the bonds consisted in the alteration of the bonds by the erasure of the name of the original or true payee and the insertion in lieu thereof of the name of the petitioner, and neither the United States Government nor the original payee have suffered any injury whatever from the erasure, and that duplicate bonds had been issued by the United States to the true and original payees.

If these securities had created a liability against the United States in whose hands soever they may come by delivery, the Government might ultimately or remotely be wronged, which arises in the case of a counterfeit or altered coin, or negotiable bank note or bond, but no such result could possibly happen in the case at bar.

The effect and operation of the act of which the jury found the defendant guilty, was only to procure money, from the Bank ot the Metropolis, by cheat and false pretences. The bank took these bonds *as security* for the money they advanced to the defendant *on his own notes;* what the defendant wanted was the discount of his own paper, and to procure that he in effect falsely represented that he was entitled to these bonds as owner or payee thereof.

Suppose the defendant had obtained the money from the Bank of the Metropolis on a stolen bond in which there was no alteration of the name of the payee, by declaring that he was the original payee, would that not have been simply getting money on false representations? And what the defendant did is not distinguishable in law from this.

And if false pretenses can be made an offeuce against the United States, why not larceny?

These views prevailed in the early case of Fox against State of Ohio (5 How.) 16 Curtis, 447. The Court there say: "The imposture of passing false coin, creates, produces or alters nothing. It leaves the legal coin as it was, affects its intrinsic value in nowise whatsoever."

How much more forcible is this language when applied to a non-negotiable registered bond, unaltered as to everything, except the true payee's name; it *can* create, produce or alter nothing.

It leaves the legal obligation as it was, affects its intrinsic value in nowise whatsoever to anyone in the world. The Government cannot be injured; the payee cannot; he can get a duplicate bond: and the case shows duplicate bonds have been issued to the payees. No one can be injured by the bond itself, but only by false pretenses with the aid or through the instrumentality of the bond.

Again, the Court says: "The criminality of this act consists
" in the obtaining for a false representative of the true coin, that
" for which the true coin alone is the equivalent. There exists
" an obvious difference, not only in the description of these
" offenses, but essentially also in their characters. The former
" is an offense directly against the Government, by which
" individuals may be effected; the other is a private wrong,
" by which the Government may be *remotely, if it will*
" in any degree, be reached." And at page 449, "the pun-
" ishment of a cheat or a misdemeanor practised within the
" State, and against those whom she is bound to protect, is
" peculiarly and appropriately within her functions and duties,
" and it is difficult to imagine an interference with those duties
" and functions which could be regular or justifiable."

And while this reasoning was not held applicable to the facts presented in the case of United States against Marigold, 9 How., 570, yet the Supreme Court expressly reaffirmed the principles laid down in the Fox case. At most the Marigold case declares untenable the doctrine that an offense cannot be punishable in the United States Courts, because the State Courts may also have jurisdiction thereof.

And it will be perceived that in the Mangold case as in the Fox case, the charge was that counterfeit coin had been made and passed, and neither was the case of a non-negotiable instrument.

The distinction between the case of a coin and a non-negotiable bond is very obvious. No one who exercises reasonable care can be injured by the alteration of a non-negotiable bond, for as is ably stated in Canningham vs. People, 4 Hun., 455: "When the obligation of a State are in the market for barter, "it is at least incumbent upon the party to examine them, and "every prudent man would investigate their origin and issue to "to ascertain whether they are authorized by law."

Point V.

The alteration contemplated by Section 5431 is only such a change in the bond as affects the liability of the Government thereon, or as may result in injury to it.

Any other construction of the statute would render it unconstitutional, for then it would punish a mere cheat cognizable exclusively by the State Courts.

A change in the numerical denomination of the bond, as altering the amount from $100 to $1,000, would be within the purview of the statute, for such a change would necessarily have a tendency to injure the Government cr affect its liability. But changing the name of the payee cannot in the remotest degree have any such effect. Suppose in a registered bond the payee himself erased his own name and inserted another name in its stead, would that be such an alteration as is contemplated by the act? Clearly not.

In U. S. vs. Fox, 95 U. S., 670–672, the bankruptcy case, it is held that "An act committed within a State, whether for a "good or a bad purpose, or whether with an honest or a criminal intent, cannot be made an offense against the United "States, unless it have some relation to the execution of a "power of Congress, or to some matter within the jurisdiction "of the United States. Any act not having any such relation "is one in respect to which the State can alone legislate."

And to punish cheats or false pretenses committed by means of altered United States securities is not within any of said grants.

Point VI.

The application should be granted, and the writs of habeas corpus and certiorari issued.

A. J. Dittenhoefer,
Of Counsel for Petitioner.